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LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE _____

BILL NO. _____

BY _____

1 AN ACT
2 RELATING TO MEDICAL MARIJUANA; AMENDING TITLE 39, IDAHO CODE, BY THE AD-
3 DITION OF A NEW CHAPTER 47, TITLE 39, IDAHO CODE, TO PROVIDE A SHORT
4 TITLE, TO PROVIDE LEGISLATIVE FINDINGS, TO DEFINE TERMS, TO PROVIDE FOR
5 REGISTRATION, TO PROVIDE FOR CERTIFICATION, TO PROVIDE FOR PROTECTION
6 AGAINST CERTAIN PENALTIES AND DISCIPLINE, DENIAL OF RIGHTS AND PRIVI-
7 LEGES, SEARCHES, ARRESTS AND PROSECUTIONS, TO PROVIDE FOR ALTERNATIVE
8 TREATMENT CENTERS, TO PROVIDE THAT CERTAIN ACTIVITIES ARE PROHIBITED,
9 TO PROVIDE THAT CERTAIN ACTIVITIES SHALL CONSTITUTE MISDEMEANORS,
10 TO PROVIDE FOR OTHER OFFENSES, TO PROVIDE FOR THE DISPENSATION OF
11 MARIJUANA, TO PROVIDE FOR AN EXEMPTION FROM CRIMINAL LIABILITY AND
12 TO PROVIDE A BURDEN OF PROOF, TO PROVIDE FOR THE RECEIPT OF FUNDS AND
13 FEES, TO PROVIDE FOR REPORTS BY THE DIRECTOR TO THE GOVERNOR AND THE
14 LEGISLATURE, TO PROVIDE THAT CERTAIN ACTIONS SHALL NOT BE REQUIRED, TO
15 PROVIDE FOR STATE IMMUNITY FROM LIABILITY, TO PROVIDE FOR RULEMAKING
16 AND TO PROVIDE FOR AN ADVISORY COMMITTEE.

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended
19 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
20 ter 47, Title 39, Idaho Code, and to read as follows:

21 CHAPTER 47
22 IDAHO COMPASSIONATE USE MEDICAL MARIJUANA ACT

23 39-4701. SHORT TITLE. This act shall be known and may be cited as the
24 "Idaho Compassionate Use Medical Marijuana Act."

25 39-4702. LEGISLATIVE FINDINGS. (1) Modern medical research has dis-
26 covered a beneficial use for marijuana in treating or alleviating the pain
27 or other symptoms associated with certain debilitating medical conditions,
28 as found by the national academy of sciences' institute of medicine in March,
29 1999;

30 (2) According to the U.S. sentencing commission and the federal bureau
31 of investigation, ninety-nine (99) out of every one hundred (100) marijuana
32 arrests in the country are made under state law, rather than under federal
33 law. Consequently, changing state law will have the practical effect of pro-
34 tecting from arrest the vast majority of seriously ill people who have a med-
35 ical need to use marijuana.

36 (3) Although federal law currently prohibits the use of marijuana, the
37 laws of Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana,
38 Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington
39 permit the use of marijuana for medical purposes, and in Arizona doctors are

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1 permitted to prescribe marijuana. Idaho joins this effort for the health and
2 welfare of its citizens.

3 (4) States are not required to enforce federal law or prosecute people
4 for engaging in activities prohibited by federal law; therefore, compliance
5 with the provisions of this chapter does not put the state of Idaho in viola-
6 tion of federal law.

7 (5) Many patients with severe chronic medical conditions are pre-
8 scribed costly addictive drugs such as morphine and oxycodone, which can
9 result in additional negative impacts to the patients health. The use of
10 medical marijuana can provide significant pain relief to the patient and at
11 the same time be a major cost savings to the patient, their families and the
12 state.

13 (6) Compassion dictates that a distinction be made between medical and
14 nonmedical uses of marijuana. Hence, the purpose of this chapter is to pro-
15 tect from arrest, prosecution, property forfeiture, and criminal and other
16 penalties, those patients who use marijuana to alleviate suffering from de-
17 bilitating medical conditions, as well as their physicians, primary care-
18 givers and those who are authorized to produce marijuana for medical pur-
19 poses.

20 39-4703. DEFINITIONS. As used in this chapter:

21 (1) "Bona fide physician-patient relationship" means a relationship in
22 which the physician has ongoing responsibility for the assessment, care and
23 treatment of a patient's debilitating medical condition;

24 (2) "Certification" means a document signed by a physician licensed and
25 in good standing to practice in the state, stating that in the physician's
26 professional opinion the patient is likely to receive therapeutic or pal-
27 liative benefit from the medical use of marijuana to treat or alleviate the
28 patient's debilitating medical condition or symptoms associated with the
29 debilitating medical condition. A certification shall be made only in the
30 course of a bona fide physician-patient relationship;

31 (3) "Debilitating medical condition" means:

32 (a) One (1) of the following conditions: A seizure disorder, including
33 epilepsy, intractable skeletal muscular spasticity, or glaucoma;

34 (b) One (1) or more of the following conditions: A chronic or debil-
35 itating disease or medical condition, or its treatment, that produces
36 one (1) or more of the following: severe debilitating pain, severe nau-
37 sea or vomiting, cachexia or wasting syndrome, seizures or severe and
38 persistent muscle spasms;

39 (c) Amyotrophic lateral sclerosis, multiple sclerosis, terminal
40 cancer, muscular dystrophy, or inflammatory bowel disease, including
41 Crohn's disease;

42 (d) Terminal illness, if the physician has determined a prognosis of
43 less than twelve (12) months of life; or

44 (e) Any other medical condition or its treatment that is approved by the
45 department by rule;

46 (4) "Department" means the Idaho department of health and welfare;

47 (5) "Director" means the director of the Idaho department of health and
48 welfare;

49 (6) "Marijuana" has the meaning given in section 37-2701, Idaho Code;

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1 (7) "Medical marijuana alternative treatment center" or "alternative
2 treatment center" means an organization approved by the department to
3 perform activities necessary to provide registered qualifying patients
4 with usable marijuana and related paraphernalia in accordance with the
5 provisions of this chapter. This term shall include the organization's
6 officers, directors, board members and employees;

7 (8) "Medical use of marijuana" means the acquisition, possession,
8 transport or use of marijuana or paraphernalia by a registered qualifying
9 patient as authorized by this chapter, or the acquisition, possession or
10 transport of marijuana or paraphernalia by a designated caregiver on behalf
11 of a registered qualifying patient as authorized by this chapter;

12 (9) "Minor" means a person who is under eighteen (18) years of age and
13 who has not been married or previously declared by a court to be emancipated;

14 (10) "Paraphernalia" has the same meaning as the term "drug parapherna-
15 lia" given in section 37-2701, Idaho Code;

16 (11) "Physician" means a person licensed to practice medicine in the
17 state of Idaho with whom the patient has a bona fide physician-patient
18 relationship and who is the primary care physician, hospice physician or
19 physician responsible for the ongoing treatment of a patient's debilitating
20 medical condition. Provided however, that such ongoing treatment shall not
21 be limited to the provision of authorization for a patient to use medical
22 marijuana or consultation solely for that purpose;

23 (12) "Primary caregiver" or "caregiver" means a resident of the state
24 who:

25 (a) Is at least eighteen (18) years old;

26 (b) Has agreed to assist with a registered qualifying patient's medi-
27 cal use of marijuana, is not currently serving as primary caregiver for
28 another qualifying patient, and is not the qualifying patient's physi-
29 cian;

30 (c) Has never been convicted of possession or sale of a controlled
31 substance, unless such conviction occurred after the effective date of
32 this act and was for a violation of federal law related to possession or
33 sale of marijuana that is authorized under this chapter;

34 (d) Has registered with the department pursuant to section 39-4704,
35 Idaho Code, and has satisfied the criminal history record background
36 check requirement of section 39-4704, Idaho Code; and

37 (e) Has been designated as primary caregiver on the qualifying pa-
38 tient's application or renewal for a registry identification card or in
39 other written notification to the department;

40 (13) "Qualifying patient" or "patient" means a resident of the state who
41 has been provided with a certification by a physician pursuant to a bona fide
42 physician-patient relationship;

43 (14) "Registry identification card" means a document issued by the de-
44 partment that identifies a person as a registered qualifying patient or pri-
45 mary caregiver;

46 (15) "Usable marijuana" means the dried leaves and flowers of mari-
47 juana, and any mixture or preparation thereof, and does not include the
48 seeds, stems, stalks or roots of the plant.

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1 39-4704. REGISTRATION. (1) The department shall establish a registry
2 of qualifying patients and their primary caregivers and shall issue a reg-
3 istry identification card, which shall be valid for two (2) years, to a qual-
4 ifying patient and primary caregiver, if applicable, who submits the follow-
5 ing, in accordance with regulations adopted by the department:

6 (a) A certification that meets the requirements of section 39-4705,
7 Idaho Code;

8 (b) An application or renewal fee, which may be based on a sliding scale
9 as determined by the director;

10 (c) The name, address and date of birth of the patient and caregiver, as
11 applicable; and

12 (d) The name, address and telephone number of the patient's physician.

13 (2) Before issuing a registry identification card, the department
14 shall verify the information contained in the application or renewal form
15 submitted pursuant to this section. In the case of a primary caregiver, the
16 department shall provisionally approve an application pending the results
17 of a criminal history record background check, if the caregiver otherwise
18 meets the requirements of this chapter. The department shall approve or deny
19 an application or renewal within thirty (30) days of receipt of the completed
20 application or renewal, and shall issue a registry identification card
21 within five (5) days of approving the application or renewal. The department
22 may deny an application or renewal only if the applicant fails to provide
23 the information required pursuant to this section, or if the department
24 determines that the information was incorrect or falsified or does not meet
25 the requirements of this chapter. Denial of an application shall be a final
26 agency decision, subject to review pursuant to the provisions of chapter 52,
27 title 67, Idaho Code.

28 (3) (a) The director shall require each applicant seeking to serve as
29 a primary caregiver to undergo a criminal history record background
30 check. The director is authorized to exchange fingerprint data with
31 and receive criminal history record background information from the
32 Idaho state police and the federal bureau of investigation consistent
33 with the provisions of applicable federal and state laws, rules and
34 regulations. The Idaho state police shall forward criminal history
35 record background information to the director in a timely manner when
36 requested pursuant to the provisions of this section.

37 An applicant seeking to serve as a primary caregiver shall submit to be-
38 ing fingerprinted in accordance with applicable state and federal laws,
39 rules and regulations. No check of criminal history record background
40 information shall be performed pursuant to this section unless the ap-
41 plicant has furnished his written consent to that check. An applicant
42 who refuses to consent to, or cooperate in, the securing of a check of
43 criminal history record background information shall not be considered
44 for inclusion in the registry as a primary caregiver or issuance of an
45 identification card. An applicant shall bear the cost for the criminal
46 history record background check, including all costs of administering
47 and processing the check.

48 (b) The director shall not approve an applicant seeking to serve as a
49 primary caregiver if the criminal history record background informa-
50 tion of the applicant reveals a disqualifying conviction. For the pur-

1 poses of this section, a disqualifying conviction shall mean a conviction
2 of a crime involving any controlled substance as set forth in the
3 provisions of Idaho law.

4 (c) Upon receipt of the criminal history record background information
5 from the Idaho state police and the federal bureau of investigation,
6 the director shall provide written notification to the applicant of his
7 qualification or disqualification for serving as a primary caregiver.
8 If the applicant is disqualified because of a disqualifying conviction
9 pursuant to the provisions of this section, the conviction that constitutes
10 the basis for the disqualification shall be identified in the
11 written notice.

12 (d) The Idaho state police shall promptly notify the director in the
13 event that an individual who was the subject of a criminal history
14 record background check conducted pursuant to this section is convicted
15 of a crime or offense in this state after the date the background check
16 was performed. Upon receipt of that notification, the director shall
17 make a determination regarding the continued eligibility of the applicant
18 to serve as a primary caregiver.

19 (e) Notwithstanding the provisions of subsection (2) of this section
20 to the contrary, no applicant shall be disqualified from serving as a
21 registered primary caregiver on the basis of any conviction disclosed
22 by a criminal history record background check conducted pursuant to
23 this section if the individual has affirmatively demonstrated to the
24 director clear and convincing evidence of rehabilitation. In determining
25 whether clear and convincing evidence of rehabilitation has been
26 demonstrated, the following factors shall be considered:

- 27 (i) The nature and responsibility of the position that the convicted
28 individual would hold, has held or currently holds;
- 29 (ii) The nature and seriousness of the crime or offense;
- 30 (iii) The circumstances under which the crime or offense occurred;
- 31 (iv) The date of the crime or offense;
- 32 (v) The age of the individual when the crime or offense was committed;
- 33 (vi) Whether the crime or offense was an isolated or repeated incident;
- 34 (vii) Any social conditions that may have contributed to the commission
35 of the crime or offense; and
- 36 (viii) Any evidence of rehabilitation, including good conduct
37 in prison or in the community, counseling or psychiatric treatment
38 received, acquisition of additional academic or vocational
39 schooling, successful participation in correctional work release
40 programs, or the recommendation of those who have had the individual
41 under their supervision.

42 (4) A registry identification card shall contain the following information:
43

- 44 (a) The name, address and date of birth of the patient and primary caregiver,
45 if applicable;
- 46 (b) The expiration date of the registry identification card;
- 47 (c) Photo identification of the cardholder; and
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1 (d) A random ten (10) digit alphanumeric identification number, con-
2 taining at least four (4) numbers and at least four (4) letters, which is
3 unique to the cardholder;

4 (e) If the cardholder is a primary caregiver, the random identifica-
5 tion number of the registered qualifying patient the primary caregiver
6 is assisting;

7 (f) Such other information that the department may specify by regula-
8 tion.

9 (5) (a) A patient who has been issued a registry identification card
10 shall notify the department of any change in the patient's name, ad-
11 dress, or physician or change in status of the patient's debilitating
12 medical condition, within thirty (30) days of such change, or the
13 registry identification card shall be deemed null and void.

14 (b) A primary caregiver who has been issued a registry identification
15 card shall notify the department of any change in the caregiver's name
16 or address within thirty (30) days of such change, or the registry iden-
17 tification card shall be deemed null and void.

18 (6) The department shall maintain a confidential list of the persons
19 to whom it has issued registry identification cards. Individual names and
20 other identifying information on the list, and information contained in any
21 application form or accompanying or supporting document, shall be confiden-
22 tial and shall not be considered a public record under chapter 3, title 9,
23 Idaho Code, and shall not be disclosed except to:

24 (a) Authorized employees of the department as necessary to perform of-
25 ficial duties of the department; and

26 (b) Authorized employees of state or local law enforcement agencies,
27 only as necessary to verify that a person who is engaged in the suspected
28 or alleged medical use of marijuana is lawfully in possession of a reg-
29 istry identification card.

30 (7) Applying for or receiving a registry card does not constitute a
31 waiver of the qualifying patient's patient-physician privilege.

32 (8) A registered qualifying patient may be registered at only one (1)
33 alternative treatment center at a time. A registered qualifying patient
34 shall notify the department of which alternative treatment center the pa-
35 tient designates and the department shall update the registered qualifying
36 patient's record and the patient's primary caregiver's record, if any, to
37 reflect the designation.

38 (9) A registered qualifying patient may change his alternative treat-
39 ment center. A fee of fifteen dollars (\$15.00) shall be paid to the depart-
40 ment. The department shall, within five (5) business days of receiving the
41 notification, update the registered qualifying patient's record and the pa-
42 tient's primary caregiver's record, if any, to reflect the change in desig-
43 nation, and notify the patient that the change has been processed. The de-
44 partment may limit the frequency a designation can be changed to once every
45 thirty (30) days.

46 (10) Within one hundred twenty (120) days of the effective date of
47 this chapter, the department shall establish a verification system. The
48 verification system must allow law enforcement personnel and alternative
49 treatment centers to enter a registry identification number to determine
50 whether or not the number corresponds with a current, valid registry iden-

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1 tification card. The system shall disclose only whether the identification
2 card is valid, whether the cardholder is a registered qualifying patient or a
3 registered primary caregiver, and the registry identification number of the
4 alternative treatment center which serves the registered qualifying patient
5 who holds the card or the registry identification number of the patient who
6 is assisted by the registered primary caregiver who holds the card.

7 39-4705. CERTIFICATION. If the registered qualifying patient's cer-
8 tifying physician notifies the department in writing that either the reg-
9 istered qualifying patient has ceased to suffer from a debilitating medical
10 condition or that the practitioner no longer believes the patient would re-
11 ceive therapeutic or palliative benefit from the medical use of marijuana,
12 the card shall become null and void upon notification of the patient from the
13 department. However, the registered qualifying patient shall have fifteen
14 (15) days to dispose of his or her marijuana.

15 39-4706. PROTECTIONS. (1) A qualifying patient or primary caregiver
16 possessing a valid registry identification card and possessing two (2)
17 ounces or less of usable marijuana, an alternative treatment center, a
18 physician, or any other person acting in accordance with the provisions of
19 this chapter shall not be subject to arrest, prosecution or any civil or
20 administrative penalty, or denied any right or privilege including, but not
21 limited to, civil penalty or disciplinary action by a professional licensing
22 board, related to the medical use of marijuana as authorized under this
23 chapter.

24 (2) Possession of, or application for, a registry identification card
25 shall not alone constitute probable cause to search the person or the prop-
26 erty of the person possessing or applying for the registry identification
27 card, or otherwise subject the person or his property to inspection by any
28 governmental agency.

29 (3) No person shall be subject to arrest or prosecution for construc-
30 tive possession, conspiracy or any other offense for simply being in the
31 presence or vicinity of the medical use of marijuana as authorized under this
32 chapter.

33 (4) No custodial parent, guardian, or person who has legal custody of a
34 qualifying patient who is a minor shall be subject to arrest or prosecution
35 for constructive possession, conspiracy or any other offense for assisting
36 the minor in the medical use of marijuana as authorized under this chapter.

37 (5) In the event the department determines, in writing and pursuant to
38 guidelines as established in rule, that a qualifying patient is construc-
39 tively prohibited from utilizing an alternative treatment center because
40 of geographic, economic or other hardships, the qualifying patient or their
41 primary caregiver possessing a valid registry identification card and
42 possessing twelve (12) or fewer marijuana plants, for the patient's personal
43 medical marijuana use, shall not be subject to arrest, prosecution or any
44 civil or administrative penalty, or denied any right or privilege including,
45 but not limited to, civil penalty or disciplinary action by a professional
46 licensing board, related to the cultivation of such plants and the medical
47 use of marijuana as authorized under this chapter.

1 (6) A qualifying patient shall not be denied employment in the public or
2 private sector on the basis of a positive test for marijuana.

3 39-4707. ALTERNATIVE TREATMENT CENTERS. (1) The department shall ac-
4 cept applications from entities for permits to operate as alternative treat-
5 ment centers, and may charge a reasonable fee for the issuance of a permit
6 under this section. The department shall seek to ensure the availability of
7 a sufficient number of alternative treatment centers throughout the state,
8 pursuant to need, including at least two (2) each in the northern, central,
9 and southern regions of the state. The first two (2) centers issued a permit
10 in each region shall be nonprofit entities, and centers subsequently issued
11 permits may be nonprofit or for-profit entities.

12 An alternative treatment center shall be authorized to acquire a rea-
13 sonable initial and ongoing inventory, as determined by the department, of
14 marijuana seeds or seedlings and paraphernalia, possess, cultivate, plant,
15 grow, harvest, process, display, manufacture, deliver, transfer, trans-
16 port, distribute, supply, sell or dispense marijuana, or related supplies to
17 qualifying patients or their primary caregivers who are registered with the
18 department pursuant to section 39-4704, Idaho Code.

19 Applicants for authorization as nonprofit alternative treatment cen-
20 ters shall be subject to all applicable state laws governing nonprofit en-
21 tities, but need not be recognized as a 501(c)(3) organization by the federal
22 internal revenue service.

23 (2) The department shall require that an applicant provide such in-
24 formation as the department determines to be necessary pursuant to rules
25 adopted pursuant to this chapter.

26 (3) A person who has been convicted of a crime involving any controlled
27 substance as set forth in title 39, Idaho Code, or any similar law of the
28 United States or any other state, shall not be issued a permit to operate
29 as an alternative treatment center or be a director, officer or employee of
30 an alternative treatment center, unless such conviction occurred after the
31 effective date of this act and was for a violation of federal law relating
32 to possession or sale of marijuana for conduct that is authorized under this
33 chapter.

34 (4) (a) The director shall require each applicant seeking a permit
35 to operate as an alternative treatment center to undergo a criminal
36 history record background check. For purposes of this section, the
37 term "applicant" shall include any owner, director, officer or employee
38 of an alternative treatment center. The director is authorized to
39 exchange fingerprint data with and receive criminal history record
40 background information from the Idaho state police and the federal
41 bureau of investigation consistent with the provisions of applicable
42 federal and state laws, rules and regulations. The Idaho state police
43 shall forward criminal history record background information to the
44 director in a timely manner when requested pursuant to the provisions of
45 this section.

46 An applicant shall submit to being fingerprinted in accordance with
47 applicable state and federal laws, rules and regulations. No check
48 of criminal history record background information shall be performed
49 pursuant to this section unless the applicant has furnished his writ-

1 ten consent to that check. An applicant who refuses to consent to,
2 or cooperate in, the securing of a check of criminal history record
3 background information shall not be considered for a permit to operate,
4 or authorization to be employed at, an alternative treatment center.
5 An applicant shall bear the cost for the criminal history record back-
6 ground check, including all costs of administering and processing the
7 check.

8 (b) The director shall not approve an applicant for a permit to operate,
9 or authorization to be employed at, an alternative treatment center if
10 the criminal history record background information of the applicant re-
11 veals a disqualifying conviction as set forth in paragraph (c) of this
12 subsection.

13 (c) Upon receipt of the criminal history record background information
14 from the Idaho state police and the federal bureau of investigation,
15 the director shall provide written notification to the applicant of his
16 qualification for or disqualification for a permit to operate or be a
17 director, officer or employee of an alternative treatment center. If
18 the applicant is disqualified because of a disqualifying conviction
19 pursuant to the provisions of this section, the conviction that con-
20 stitutes the basis for the disqualification shall be identified in the
21 written notice.

22 (d) The Idaho state police shall promptly notify the director in the
23 event that an individual who was the subject of a criminal history
24 record background check conducted pursuant to this section is convicted
25 of a crime or offense in this state after the date the background check
26 was performed. Upon receipt of that notification, the director shall
27 make a determination regarding the continued eligibility to operate or
28 be a director, officer or employee of an alternative treatment center.

29 (e) Notwithstanding any other provisions of this section to the con-
30 trary, the director may offer provisional authority for an applicant to
31 be an employee of an alternative treatment center for a period not to ex-
32 ceed three (3) months if the applicant submits to the director a sworn
33 statement attesting that the person has not been convicted of any dis-
34 qualifying conviction pursuant to this section.

35 (f) Notwithstanding any other provisions of this section to the
36 contrary, no employee of an alternative treatment center shall be
37 disqualified on the basis of any conviction disclosed by a criminal
38 history record background check conducted pursuant to this section if
39 the individual has affirmatively demonstrated to the director clear and
40 convincing evidence of rehabilitation. In determining whether clear
41 and convincing evidence of rehabilitation has been demonstrated, the
42 following factors shall be considered:

- 43 (i) The nature and responsibility of the position that the con-
44 victed individual would hold, has held or currently holds;
- 45 (ii) The nature or seriousness of the crime or offense;
- 46 (iii) The circumstances under which the crime or offense occurred;
- 47 (iv) The date of the crime or offense;
- 48 (v) The age of the individual when the crime or offense was com-
49 mitted;

1 (vi) Whether the crime or offense was an isolated or repeated in-
2 cident;

3 (vii) Any social conditions that may have contributed to the com-
4 mission of the crime or offense; and

5 (viii) Any evidence of rehabilitation, including good conduct
6 in prison or in the community, counseling or psychiatric treat-
7 ment received, acquisition of additional academic or vocational
8 schooling, successful participation in correctional work release
9 programs, or the recommendation of those who have had the individ-
10 ual under their supervision.

11 (5) The department shall issue a permit to a person to operate as an
12 alternative treatment center if the department finds that issuing such
13 a permit would be consistent with the purposes of this chapter, the re-
14 quirements of this section are met and the department has verified the
15 information contained in the application. The department shall approve
16 or deny an application within sixty (60) days after receipt of a completed
17 application. The denial of an application shall be considered a final agency
18 decision, subject to review pursuant to the provisions of chapter 52, title
19 67, Idaho Code. The department may suspend or revoke a permit to operate as
20 an alternative treatment center for cause, which shall be subject to review
21 pursuant to the provisions of chapter 52, title 67, Idaho Code.

22 (6) A person who has been issued a permit pursuant to this section shall
23 display the permit at the premises of the alternative treatment center at all
24 times when marijuana is being produced or dispensed to a registered quali-
25 fying patient or the patient's primary caregiver. The department shall in-
26 clude on each permit a random ten (10) digit registry identification number
27 that shall be unique to the alternative treatment center.

28 (7) An alternative treatment center shall report any change in informa-
29 tion to the department not later than ten (10) days after such change, or the
30 permit shall be deemed null and void.

31 (8) An alternative treatment center may charge a registered qualifying
32 patient or primary caregiver for the reasonable costs associated with the
33 production and distribution of marijuana for the cardholder.

34 (9) The director shall adopt rules to:

35 (a) Require such written documentation of each delivery of marijuana
36 to, and pickup of marijuana for, a registered qualifying patient, in-
37 cluding the date and amount dispensed, to be maintained in the records
38 of the alternative treatment center as the director determines neces-
39 sary to ensure effective documentation of the operations of each alter-
40 native treatment center;

41 (b) Monitor, oversee and investigate all activities performed by an al-
42 ternative treatment center; and

43 (c) Ensure adequate security of all facilities twenty-four (24) hours
44 per day, including production and retail locations, and security of all
45 delivery methods to registered qualifying patients.

46 (10) Alternative treatment centers shall be located only in those areas
47 that do not violate zoning laws.

48 39-4708. ACTIVITY NOT PERMITTED. The provisions of this chapter shall
49 not be construed to permit a person to:

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1 (1) Operate, navigate or be in actual physical control of any vehicle,
2 aircraft, railroad train, stationary heavy equipment or vessel while under
3 the influence of marijuana; or

4 (2) Smoke marijuana in a school bus or other form of public transporta-
5 tion, in a private vehicle unless the vehicle is not in operation, on any
6 school grounds, in any correctional facility, at any public park or beach,
7 at any recreation center, or in any place where smoking is otherwise prohib-
8 ited.

9 A person who commits an act as provided in this section shall be subject to
10 such penalties as are provided by law.

11 39-4709. CRIMINAL CONDUCT. A person who knowingly sells, offers, or
12 exposes for sale, or otherwise transfers, or possesses with the intent to
13 sell, offer or expose for sale or transfer, a document that falsely purports
14 to be a registration card issued pursuant to this chapter, or a registration
15 card issued pursuant to this chapter that has been altered, is guilty of a
16 misdemeanor. A person who knowingly presents to a law enforcement officer a
17 document that falsely purports to be a registration card issued pursuant to
18 this chapter, or a registration card that has been issued pursuant to this
19 chapter that has been altered, is guilty of a misdemeanor. The provisions of
20 this section are intended to supplement current law and shall not limit pros-
21 ecution or conviction for any other offense.

22 39-4710. DISPENSATION OF MARIJUANA. (1) Before marijuana may be
23 dispensed to a registered qualifying patient or the patient's primary care-
24 giver, the alternative treatment center shall verify that the person holds
25 a valid registry identification card and that the alternative treatment
26 center is the designated alternative treatment center for the registered
27 qualifying patient who is obtaining the marijuana directly or via his
28 primary caregiver.

29 (2) An alternative treatment center shall not dispense more than two
30 (2) ounces of marijuana to a registered qualifying patient, directly or via a
31 primary caregiver, in any twenty-eight (28) day period. Alternative treat-
32 ment centers shall ensure compliance with this limitation by maintaining in-
33 ternal confidential records that include records specifying how much mari-
34 juana was dispensed to the registered qualifying patient and whether it was
35 dispensed directly to the registered qualifying patient or to his primary
36 caregiver. Each entry shall include the date and time the marijuana was dis-
37 pensed. All dispensing records created by an alternative treatment center
38 shall identify qualifying patients and primary caregivers by their registry
39 identification numbers and may not contain names or other personally identi-
40 fying information.

41 39-4711. EXEMPTION -- BURDEN OF PROOF. (1) If conduct is authorized
42 by the provisions of this chapter, that authorization shall, subject to
43 the provisions of this section, constitute an exemption from criminal
44 liability, and the absence of such authorization shall not be construed to
45 be an element of any offense. It is an affirmative defense to any criminal
46 action arising under this chapter or any other provision of Idaho law that
47 the defendant is the authorized holder of an appropriate registration,

1 permit or order form or is otherwise exempted or excepted from criminal lia-
2 bility by virtue of any provision of this chapter. The affirmative defense
3 established herein shall be proven by the defendant by a preponderance of the
4 evidence. It shall not be necessary for the state to negate any exemption
5 set forth in this chapter in any complaint, information, indictment or other
6 pleading or in any trial, hearing or other proceeding under this chapter.

7 (2) No liability shall be imposed by virtue of this chapter upon any
8 duly authorized state officer engaged in the enforcement of any law or mu-
9 nicipal ordinance relating to controlled substances.

10 39-4712. RECEIPT OF FUNDS -- FEES. (1) The director may accept from
11 any governmental department or agency, public or private body, or any other
12 source, grants or contributions to be used in carrying out the purposes of
13 this chapter.

14 (2) All fees collected pursuant to this chapter, including those from
15 qualifying patients and alternative treatment centers' initial, modifica-
16 tion and renewal applications, shall be used to offset the cost of the de-
17 partment's administration of the provisions of this chapter.

18 39-4713. REPORTS. (1) The director shall report to the governor and to
19 the legislature:

20 (a) No later than one (1) year after the effective date of this act, on
21 the actions taken to implement the provisions of this chapter; and

22 (b) Annually thereafter on the number of applications for registry
23 identification cards, the number of qualifying patients registered,
24 the number of primary caregivers registered, the nature of the debil-
25 itating medical conditions of the patients, the number of registry
26 identification cards revoked, the number of alternative treatment cen-
27 ter permits issued and revoked, and the number of physicians providing
28 certifications for patients.

29 (2) The reports shall not contain any identifying information of pa-
30 tients, caregivers or physicians.

31 (3) Within two (2) years after the effective date of this act and every
32 two (2) years thereafter, the director shall: evaluate whether there are
33 sufficient numbers of alternative treatment centers to meet the needs of
34 registered qualifying patients throughout the state; evaluate whether the
35 maximum amount of medical marijuana allowed pursuant to this chapter is
36 sufficient to meet the medical needs of qualifying patients; and determine
37 whether any alternative treatment center has charged excessive prices for
38 marijuana that the center dispensed.

39 The director shall report his findings no later than two (2) years after the
40 effective date of this act, and every two (2) years thereafter, to the gover-
41 nor and to the legislature.

42 39-4714. ACTIONS NOT REQUIRED. Nothing in this chapter shall be con-
43 strued to require a government medical assistance program or private health
44 insurer to reimburse a person for costs associated with the medical use of
45 marijuana, or an employer to accommodate the medical use of marijuana in any
46 workplace.

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1 39-4715. STATE NOT LIABLE. In addition to any immunity or defense
2 provided by law, the state and any employee or agent of the state shall not
3 be held liable for any actions taken in accordance with this chapter or for
4 any deleterious outcomes from the medical use of marijuana by any registered
5 qualifying patient.

6 39-4716. RULES -- ADVISORY COMMITTEE. The director shall, within
7 ninety (90) days of the effective date of this act, promulgate such rules
8 as he deems necessary to implement the provisions of this chapter unless
9 otherwise specified pursuant to the provisions of this chapter. Rules shall
10 include, but not be limited to, rules for the selection and function of an
11 advisory committee which shall be established on the effective date of this
12 act for the purpose of advising the director on the administrative aspects
13 of the Idaho compassionate use medical marijuana act, reviewing current and
14 proposed administrative rules of the program and providing annual input on
15 the fee structure of the program. Members of the committee shall include
16 representatives of the medical community, law enforcement, patient advocate
17 groups and legislature and any other fields as determined by the director.
18 The committee shall meet at least three (3) times per year, at times and
19 places specified by the director and shall serve without compensation. The
20 department shall provide staff support to the committee. To the extent
21 permitted by laws relating to confidentiality, state agencies shall furnish
22 any information that the members of the committee consider necessary to
23 perform their duties.

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1 MEDICAL MARIJUANA - Adds to existing law relating to health to provide for
2 the Idaho Compassionate Use Medical Marijuana Act.