

# THE IDAHO MEDICAL MARIJUANA ACT

The short ballot title for this referendum is as follows:

## INITIATIVE ESTABLISHING MEDICAL MARIJUANA PROGRAM FOR QUALIFYING PATIENTS AND PROTECTING PARTICIPANTS FROM CRIMINAL PROSECUTION AND CIVIL SANCTION.

The long ballot title for this referendum is as follows:

AN INITIATIVE RELATING TO MEDICAL MARIJUANA; AMENDING TITLE 39, IDAHO CODE, BY ADDITION OF A NEW CHAPTER 100, KNOWN AS THE "IDAHO MEDICAL MARIJUANA ACT" TO PROTECT FROM ARREST, CRIMINAL AND CIVIL SANCTION, PATIENTS WHO HAVE CHRONIC DISEASES OR CONDITIONS OR ARE TERMINALLY ILL, AND CAREGIVERS, GROWERS, AND AGENTS OF MEDICAL MARIJUANA ORGANIZATIONS WHO MAY POSSESS OR CULTIVATE MARIJUANA FOR MEDICAL PURPOSES; ESTABLISH A REGISTRY OF QUALIFYING PATIENTS, CAREGIVERS, GROWERS, AND AGENTS WHO SHALL BE ISSUED REGISTRY IDENTIFICATION CARDS; ESTABLISH PRODUCTION FACILITIES, SAFETY COMPLIANCE FACILITIES AND DISPENSARIES WHICH SHALL BE ISSUED REGISTRATION CERTIFICATES; TO AUTHORIZE PRODUCTION OF MARIJUANA; ESTABLISH THE MAXIMUM AMOUNT OF MARIJUANA QUALIFYING PATIENTS AND CAREGIVERS PER ASSISTED PATIENT MAY POSSESS IS FOUR (4) OUNCES OF USABLE MARIJUANA AND SIX (6) MARIJUANA PLANTS IF ISSUED A REGISTRY IDENTIFICATION CARD ALLOWING CULTIVATION; ESTABLISH REPORTING RULES AND PENALTIES; TO PROVIDE THE DEPARTMENT SHALL SUBMIT AN ANNUAL REPORT TO THE IDAHO LEGISLATURE; PROVIDE INFORMATION REGARDING NAMES AND OTHER IDENTIFYING INFORMATION OF PERSONS WHO HAVE BEEN ISSUED OR APPLIED FOR A REGISTRY IDENTIFICATION CARD, PURSUANT TO CHAPTER 100, TITLE 39, IDAHO CODE IS EXEMPT FROM DISCLOSURE.

Be it enacted by the People of Idaho:

**SECTION 1. This initiative may be referred to as "The Idaho Medical Marijuana Act."**

**SECTION 2. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 100, Title 39, Idaho Code, and to read as follows:**

CHAPTER 100, IDAHO MEDICAL MARIJUANA ACT

**39-10001. DEFINITIONS.** For purposes of this Chapter, unless the context otherwise requires:

(1) "Agent" means a principal officer, board member, employee, or volunteer of a medical marijuana organization who is at least twenty-one (21) years of age, and who meets the qualifications set forth in this act.

(2) "Allowable amount of marijuana" means:

(a) With respect to a qualifying patient:

(i) Four (4) ounces of marijuana; and

(ii) If the qualifying patient's registry identification card states that the qualifying patient has a hardship cultivation designation:

1. Six (6) marijuana plants contained in an enclosed, locked facility, except the plants are not required to be in an enclosed, locked facility if the plants are being transported; and

2. Marijuana produced from the plants that is on the premises where the plants were grown or at the qualifying patient's residence.

(b) With respect to a designated caregiver for each qualifying patient assisted by the designated caregiver:

(i) Four (4) ounces of marijuana; and

(ii) If the designated caregiver's registry identification card provides that the qualifying patient has a hardship cultivation designation:

1. Six (6) marijuana plants contained in an enclosed, locked facility, except the plants are not required to be in an enclosed, locked facility if the plants are being transported; and

2. Marijuana produced from the plants that is on the premises where the plants were grown or at the designated caregiver's residence or the qualifying patient's residence.

(3) "Cardholder" means a qualifying patient or a designated caregiver who possesses a valid registry identification card.

(4) "Debilitating medical condition" means:

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- (a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, Alzheimer's disease, post-traumatic stress disorder, inflammatory bowel disease, Huntington's disease, Tourette syndrome; or
- (b) A chronic or debilitating disease or medical condition or its treatment that produces cachexia or wasting syndrome, severe pain, chronic pain, severe nausea, seizures, including those characteristic of epilepsy, or severe and persistent muscle spasms, including those characteristic of multiple sclerosis;
- (c) Any terminal illness with life expectancy of less than twelve (12) months as determined by a licensed medical physician; or
- (d) Any other serious medical condition or its treatment added by the Department pursuant to section 39-10015.
- (5) "Department" means the Department of Health and Welfare or its successor agency.
- (6) "Designated caregiver" means:
- (a) an entity licensed in Idaho to provide healthcare services that agrees to assist with qualifying patients' medical use of marijuana; or
- (b) a natural person who is at least twenty-one (21) years of age and has agreed to assist no more than three (3) qualifying patients with the medical use of marijuana.
- (7) "Enclosed, locked facility" means a closet, room, greenhouse, building, or other enclosed area equipped with locks or other security devices that permit access only by a cardholder or cardholders allowed to cultivate the plants.
- (8) "Marijuana" means all parts of the plant of the genus *Cannabis*, regardless of species, and whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, including any plant material or the resin or any derivative thereof, regardless of form, containing any of the chemical substances classified as tetrahydrocannabinols. It does not include the mature stalks of the plant unless the same are intermixed with prohibited parts thereof, fiber produced from the stalks, oil or cake made from the seeds or the achene of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom or where the same are intermixed with prohibited parts of such plant, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.
- (9) "Medical marijuana dispensary" means an entity registered with the Department pursuant to this act that acquires, possesses, stores, transfers, transports, sells, supplies, or dispenses marijuana, paraphernalia, or related supplies and educational materials to cardholders.
- (10) "Medical marijuana organization" means a medical marijuana dispensary, a medical marijuana production facility, or a safety compliance facility.
- (11) "Medical marijuana production facility" means an entity registered with the department pursuant to this act that acquires, possesses, cultivates, harvests, processes, manufactures, prepares, packs, stores, delivers, transfers, transports, supplies, or sells marijuana and related supplies to medical marijuana organizations.
- (12) "Medical use" means the acquisition, possession, planting, cultivation, propagation, harvest, production, processing, manufacture, testing, compounding, converting, use, administration, preparation, delivery, transfer, or transportation of marijuana, marijuana paraphernalia, and all related supplies and equipment to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.
- (13) "Nonresident cardholder" means a person who:
- (a) has been diagnosed with a debilitating medical condition by a person who is licensed with authority to prescribe drugs to humans in the state of the person's residence, who possesses a registry identification card, or its equivalent, that was issued pursuant to the laws of another state, or is the parent, guardian, conservator, or other person with authority to consent to the medical treatment of a person who has been diagnosed with a debilitating medical condition by a person who is licensed with authority to prescribe drugs to humans in the state of the person's residence, who possesses a registry identification card, or its equivalent, that was issued pursuant to the laws of another state, and
- (b) is not a resident of Idaho or has been a resident of Idaho fewer than thirty (30) days; and
- (c) has submitted any documentation required by the Department and has received confirmation of registration.
- (14) "Practitioner" means an individual who is authorized to prescribe drugs pursuant to Chapter 18, Title 54, Idaho Code.
- (15) "Qualifying patient" means a person who is a resident of Idaho and has been diagnosed by a practitioner as having a debilitating medical condition.
- (16) "Registration certificate" means a document issued by the Department that identifies an entity as a medical marijuana dispensary, medical marijuana production facility, or a safety compliance facility.
- (17) "Registry identification card" means a document issued by the Department that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to this act.
- (18) "Safety compliance facility" means an independent entity registered with the Department pursuant to this act to analyze the safety and potency of marijuana.

(19) "Written recommendation" means a document dated and signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. The practitioner must:

- (a) Specify the patient's debilitating medical condition in the written recommendation;
- (b) Sign and date the written recommendation only in the course of a bona fide practitioner- patient relationship after the practitioner has completed a full assessment of the patient's medical history and current medical condition; and
- (c) If the patient is a minor, explain the potential risks and benefits of the medical use of marijuana to and obtain the written consent of the minor's parent, guardian, conservator, or other person with authority to consent to the medical treatment of the minor.

**39-10002. LIMITATIONS.** This Chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, the following conduct:

- (1) Undertaking any task under the influence of marijuana that would constitute negligence or professional malpractice.
- (2) Possessing or engaging in the medical use of marijuana:
  - (a) On a school bus; or
  - (b) In any correctional facility.
- (3) Smoking marijuana:
  - (a) On any form of public transportation;
  - (b) On the grounds of any licensed daycare, preschool, primary or secondary school; or
  - (c) In any public place.
- (4) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, train, motorboat, or other motorized form of transport while under the influence of marijuana, except a registered qualifying patient or nonresident cardholder who is a qualifying patient may not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.
- (5) Solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol by a person not licensed for this activity by the Department.
- (6) Using marijuana except as authorized under this Chapter.
- (7) Nothing in this Chapter requires:
  - (a) A government medical assistance program or private insurer to reimburse a person for costs associated with the medical use of marijuana;
  - (b) Any person or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to smoke marijuana on or in that property;
  - (c) A property owner to allow the cultivation of marijuana on a rental property; or
  - (d) A licensed daycare, preschool, primary or secondary school to allow the medical use of marijuana on its property.

**39-10003. FACILITY RESTRICTIONS.**

- (1) Any nursing facility, intermediate care facility, hospice house, hospital, or other type of residential care or assisted living facility may adopt reasonable restrictions on the use of marijuana by their residents or a person receiving inpatient services, including:
  - (a) That the facility will not store or maintain the qualifying patient's supply of marijuana;
  - (b) That the facility, caregivers, or hospice agencies serving the facility's residents are not responsible for providing the marijuana for qualifying patients;
  - (c) That marijuana is consumed by a method other than smoking; or
  - (d) That marijuana is consumed only in a place specified by the facility.
- (2) Nothing in this section requires a facility listed in subsection (1) to adopt restrictions on the medical use of marijuana.
- (3) A facility listed in subsection (1) may not unreasonably limit a registered qualifying patient's access to or use of marijuana as allowed under this Chapter unless failing to do so would cause the facility to lose a monetary or licensing related benefit under federal law or regulations.

**39-10004. RULEMAKING.**

- (1) Not later than one hundred twenty (120) days after the effective date of this act, the Department shall adopt regulations necessary for the implementation of this Chapter. Such regulations shall include:
  - (a) The manner the Department must consider petitions from the public to add debilitating medical conditions to the list of debilitating medical conditions set forth in section 39-10001.
  - (b) The form and content of marijuana organization registration and renewal applications submitted under this Chapter.
  - (c) A system to score numerically competing medical marijuana dispensary applicants that must consider:
    - (i) The suitability of the proposed location and its accessibility for qualifying patients;
    - (ii) The character, veracity, background, and relevant experience of the principal officers and board members;
    - (iii) The business plan proposed by the applicant, including its ability to maintain an adequate supply of marijuana, plans to ensure safety and security of qualifying patients and the

community, procedures to be used to prevent diversion, and any plan for making marijuana available to low income registered qualifying patients; and

(iv) Additional weight shall be given to applicants who meet the eligibility requirements for preferences under Chapter 5, Title 65, Idaho Code.

(d) The manner the Department shall consider applications for and renewals of registry identification cards.

(e) Requirements to prevent diversion and theft of marijuana without imposing an undue burden on or compromising the confidentiality of cardholders, including:

(i) Qualifications for registration certificates and the manner it must consider applications for and renewals of registration certificates.

(ii) Oversight requirements for medical marijuana organizations.

(iii) Record keeping requirements for medical marijuana organizations.

(iv) Security requirements, including requirements for protection of each location by an operational security alarm system, to prevent diversion of marijuana.

(f) Testing, packaging, and labeling requirements to ensure consumer safety and accurate information.

(g) Health and safety regulations, including restrictions on the use of pesticides that are injurious to human health, and standards for the safe manufacture of marijuana products.

(h) Requirements for the transport and storage of marijuana by medical marijuana organizations.

(i) Restrictions on advertising, marketing, signage, and display of marijuana.

(j) Procedures for suspending or revoking the registration certificates or registry identification cards of medical marijuana organizations or cardholders who violate the provisions of this Chapter or the rules adopted pursuant to this Chapter.

(k) Establishing application and renewal fees for registry identification cards and registration certificates, according to the following:

(i) The total amount of all fees must generate revenues sufficient to implement and administer this Chapter, except fee revenue may be offset or supplemented by private donations.

(ii) The fee for a registry identification card, a registration certificate, a renewal registry identification card, or a renewal of a registration certificate may be no greater than necessary to implement and administer this Chapter.

(iii) The application or renewal fee for a qualifying patient or designated caregiver shall not exceed one hundred dollars (\$100), with this upper limit adjusted annually for inflation, unless the Department determines a reasonable greater fee is necessary to carry out its responsibilities under this Chapter.

(iv) The Department may establish a sliding scale of patient application and renewal fees based upon a qualifying patient's household income.

(v) The Department may consider private donations to reduce application and renewal fees.

(2) The Department is authorized to adopt the rules set forth in subsection (1) and must adopt those rules pursuant to Chapter 52, Title 67, Idaho Code.

### **39-10005. REGISTRATION AND CERTIFICATION OF MEDICAL MARIJUANA ORGANIZATIONS.**

(1) Medical marijuana organizations shall register with the Department.

(2) Not later than ninety (90) days after receiving an application for a medical marijuana organization, the Department shall register the prospective medical marijuana organization and issue a registration certificate and an identification number if all of the following conditions are satisfied:

(a) The prospective medical marijuana organization has submitted all of the following:

(i) The application fee.

(ii) An application, including:

(A) The legal name of the prospective medical marijuana organization;

(B) The physical address of the prospective medical marijuana organization that is not within one thousand (1,000) feet of a public or private school existing before the date of the medical marijuana organization application;

(C) The name and date of birth of each principal officer and board member of the proposed medical marijuana organization; and

(D) Any additional information requested by the Department.

(iii) Operating procedures consistent with Department rules for oversight of the proposed medical marijuana organization, including procedures to ensure accurate record keeping and adequate security measures.

(iv) If the city or county where the proposed medical marijuana organization would be located has enacted zoning restrictions, a sworn statement certifying that the proposed medical marijuana organization is in compliance with the restrictions.

(b) None of the principal officers or board members has served as a principal officer or board member of a medical marijuana organization that has had its registration certificate revoked.

(c) None of the principal officers or board members are under twenty-one (21) years of age at the time of application.

(d) At least one (1) principal officer is a resident of Idaho.

(e) The applicant meets the requirements and qualifications established by the Department.

(3) The Department may conduct a background check of the principal officers and board members of the prospective medical marijuana dispensary to carry out this provision.

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### **39-10006. REGISTRATION OF QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS.**

(1) A qualifying patient may apply to the Department for a registry identification card by submitting all of the following:

- (a) A written recommendation issued by a practitioner within the ninety (90) days immediately preceding the date of application.
- (b) The application fee.
- (c) An application, including:
  - (i) Name, mailing address, social security number, driver's license number, and date of birth of the qualifying patient;
  - (ii) Name, mailing address, and telephone number of the qualifying patient's practitioner;
  - (iii) Name, mailing address, social security number, driver's license number, and date of birth of the qualifying patient's designated caregiver, if any;
  - (iv) A signed statement from the designated caregiver, if any, agreeing to be the patient's designated caregiver and certifying that if the application is approved, he or she will not be a registered designated caregiver for more than three (3) registered qualifying patients; and
  - (v) A designation as to whether the qualifying patient or the designated caregiver will be allowed to cultivate marijuana plants for the qualifying patient's medical use if the qualifying patient qualifies for a hardship cultivation designation.

(2) Except as provided in section 39-10009, the Department shall:

(a) Verify the information contained in an application or renewal submitted pursuant to this Chapter and approve or deny an application or renewal within twenty (20) days of receiving a completed application or renewal.

(b) Issue a registry identification card to a qualifying patient and the qualifying patient's designated caregiver, if any, within ten (10) days of approving the application or renewal. A designated caregiver must have a registry identification card for each of the designated caregiver's qualifying patients.

(3) The Department may not issue a registry identification card to a qualifying patient who is under the age of eighteen (18) unless:

(a) A parent, guardian, conservator, or other person with authority to consent to the medical treatment for the qualifying patient submits a written recommendation for the qualifying patient from a licensed practitioner; and

(b) A parent, guardian, conservator, or other person with authority over health care decisions for the qualifying patient consents in writing to allow the qualifying patient's medical use of marijuana, to serve as the qualifying patient's designated caregiver, and to control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

(4) If the registry identification card of either a qualifying patient or the qualifying patient's designated caregiver does not state that the cardholder is permitted to cultivate marijuana plants, the Department must give written notice to the registered qualifying patient, when the qualifying patient's registry identification card is issued, of the names and addresses of all registered medical marijuana dispensaries.

**39-10007. CONTENTS OF REGISTRY IDENTIFICATION CARDS.** Registry identification cards for qualifying patients and designated caregivers must contain all of the following:

- (1) Name and date of birth of the cardholder;
- (2) A statement of whether the cardholder is a qualifying patient or a designated caregiver;
- (3) The date of issuance and expiration date of the registry identification card;
- (4) An identification number that is unique to the cardholder;
- (5) If the cardholder is a designated caregiver, the identification number of the registered qualifying patient the designated caregiver is assisting;
- (6) A photograph of the cardholder if the Department decides to require one; and
- (7) A clear indication of whether the cardholder is permitted to cultivate marijuana plants for the qualifying patient's medical use.

**39-10008. HARDSHIP CULTIVATION DESIGNATION.**

(1) The Department shall issue a cultivation designation to a qualifying patient whose access to a medical marijuana dispensary is limited by a verified financial hardship, a physical incapacity to access reasonable transportation, or the lack of a medical marijuana dispensary within a reasonable distance of the qualifying patient's residence.

**39-10009. DENIAL OF REGISTRY IDENTIFICATION CARDS.**

(1) The Department may deny an application or renewal of a qualifying patient or designated caregiver's registry identification card or a hardship cultivation designation, only if the applicant:

- (a) Does not meet the requirements set forth under this Chapter;
  - (b) Does not provide the information required;
  - (c) Previously had a registry identification card revoked for violating this Chapter; or
  - (d) Provides false information.
- (e) For a designated caregiver, the designated caregiver is younger than twentyone (21) years of age and is not the legal guardian of each qualifying patient the person would assist.

(2) At the time the Department denies a registry identification card to a qualifying patient or to a designated caregiver or denies a hardship cultivation designation, it shall give written notice to the

qualifying patient of the reason for denying a registry identification card to the qualifying patient or to the qualifying patient's designated caregiver.

(3) Denial of an application or renewal or designation is subject to review pursuant to Chapter 52, Title 67, Idaho Code.

### **39-10010. EXPIRATION AND RENEWAL OF REGISTRY IDENTIFICATION CARDS AND REGISTRATION CERTIFICATES – REPLACEMENT.**

(1) All registry identification cards and registration certificates expire one (1) year after the date of issue.

(2) If the practitioner states in the written recommendation that the qualifying patient would benefit from the medical use of marijuana until a specified earlier date, then the registry identification card shall expire on that date.

(3) If a cardholder loses his registry identification card, the cardholder shall promptly notify the Department. Within ten (10) days of the notification, and upon payment of a twenty-five-dollar (\$25) fee, the Department shall issue a new registry identification card to the cardholder and, if the cardholder is a registered qualifying patient, to the registered qualifying patient's registered designated caregiver, if any.

### **39-10011. VERIFICATION SYSTEM.**

(1) The Department shall establish and maintain a verification system for use by law enforcement personnel to verify registry identification cards.

(2) The verification system must allow law enforcement personnel to enter a registry identification number and verify whether the number corresponds with a current, valid identification card at all times.

(3) The system may disclose only whether the identification card is valid, the name of the cardholder, whether the cardholder is a qualifying patient or a designated caregiver, the registry identification number of any affiliated registered qualifying patient and whether the cardholder is permitted to cultivate marijuana plants.

(4) At the cardholder's request, the Department may confirm the cardholder's status as a registered qualifying patient or a registered designated caregiver to a third party, such as a landlord, school, medical professional, or court.

### **39-10012. REQUIREMENTS FOR MEDICAL MARIJUANA ORGANIZATIONS.**

(1) Medical marijuana organizations shall comply with all regulations issued by the Department pursuant to this Chapter.

(2) All cultivation, harvesting, manufacture, and packaging of marijuana by a medical marijuana production facility must take place in a secure, locked facility at a physical address provided to the Department during the registration process. The secure, locked facility may only be accessed by agents of the medical marijuana production facility.

(3) A Medical marijuana dispensary or medical marijuana production facility may acquire marijuana or marijuana plants from a registered qualifying patient or a registered designated caregiver only if the registered qualifying patient or registered designated caregiver receives no compensation for the marijuana.

(4) A medical marijuana dispensary shall not share space with or have any financial relationship to or financial connection with a practitioner.

(5) A medical marijuana organization may not employ or allow to volunteer any person under the age of twenty-one (21) years.

(6) Medical marijuana organizations are subject to reasonable inspection by the Department. The Department shall give reasonable notice of an inspection under this Chapter.

### **39-10013. MEDICAL MARIJUANA ORGANIZATION LOCATIONS.**

(1) A city and county may enact reasonable zoning ordinances and regulations not in conflict with the Chapter, or with regulations enacted pursuant to this Chapter, governing the time, place, and manner of medical marijuana organization operations.

(2) Medical marijuana organization dispensaries may not be located within 1,000 feet of a public or private school, but a dispensary shall not have its renewal denied if a school opens or moves within 1,000 feet of the dispensary after it is licensed.

**39-10014. DISPENSING MARIJUANA FOR MEDICAL USE.** Before marijuana may be dispensed to a registered qualifying patient or a registered designated caregiver, a medical marijuana dispensary agent must not believe that the amount dispensed would cause the cardholder to possess more than the allowable amount of marijuana.

### **39-10015. ADDITION OF DEBILITATING MEDICAL CONDITIONS.**

(1) Any resident of Idaho may petition the Department to add serious medical conditions or treatments to the list of debilitating medical conditions set forth in section 39-10001(4).

(2) The Department shall provide notice to the public, host a public hearing, and request public comment to add a serious medical condition or treatment to the list of debilitating medical conditions set forth in 39-10001(4) upon receipt by the Department of a petition to add the proposed condition or treatment.

(3) The Department shall consider petitions in the manner required by Department rule. The Department shall approve or deny a petition within one hundred eighty (180) days of its submission. The approval or denial of a petition is subject to review pursuant to Chapter 52, Title 67, Idaho Code

### **39-10016. TAXATION OF MEDICAL MARIJUANA SOLD.**

(1) An excise tax of four percent (4%) shall be imposed upon the gross receipts of all marijuana sold by a medical marijuana dispensary to a qualifying patient or a designated caregiver. The Idaho State Tax Commission shall establish a procedure for the collection of this tax and shall collect the tax. (

2) The tax revenue shall be disbursed to the Department to cover reasonable costs incurred by the Department in carrying out its duties under this Chapter. The remaining tax revenue collected shall be disbursed fifty percent (50%) to the Idaho Division of Veterans Services and the other fifty percent (50%) to the General Fund. The funds disbursed to the Idaho Division of Veterans Services are in addition to any funds regularly dispersed to the Idaho Division of Veterans Services other sources.

(3) The tax levied in this section is separate from, and in addition to, other state and local taxes.

**39-10017. NOTIFICATIONS TO DEPARTMENT.**

(1) A registered qualifying patient shall notify the Department within ten (10) days of any change in the registered qualifying patient's name, mailing address, designated caregiver, preference regarding who may cultivate marijuana for the registered qualifying patient, address where marijuana plants are cultivated, or if the registered qualifying patient ceases to have his debilitating medical condition, or has any change to circumstances relating to a hardship cultivation designation.

(2) A registered designated caregiver shall notify the Department within ten (10) days of any change in the designated caregiver's name or mailing address.

(3) If a cardholder notifies the Department of any changes listed in this section but remains eligible under this Chapter, the Department shall issue the cardholder a new registry identification card within ten (10) days of receiving the updated information and a ten-dollar (\$10.00) fee. If the person notifying the Department is a registered qualifying patient, the Department shall also issue the qualifying patient's registered designated caregiver, if any, a new registry identification card within ten (10) days of receiving the updated information.

(4) If the registered qualifying patient's recommending practitioner notifies the Department in writing that either the registered qualifying patient has ceased to suffer from a debilitating medical condition or that the practitioner no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana and that the recommending practitioner has notified the qualifying patient of this belief, the card is void upon notification by the Department to the qualifying patient.

(5) If a registered qualifying patient ceases to be a registered qualifying patient or changes the registered designated caregiver, the Department shall promptly notify the former designated caregiver that the designated caregiver's duties and rights under this Chapter for the qualifying patient expire fifteen (15) days after the Department sends notification.

**39-10018. ANNUAL REPORT.** The Department shall submit to the legislature an annual public report that does not disclose any identifying information about cardholders, medical marijuana organizations, or practitioners but contains all of the following information:

(1) The number of registry identification card applications and renewals;

(2) The number of qualifying patients and designated caregivers approved;

(3) The nature of the debilitating medical conditions of the qualifying patients;

(4) The number of registry identification cards revoked;

(5) The number of practitioners providing written recommendations for qualifying patients;

(6) The number of registration certificates applied for, issued, and revoked for medical marijuana dispensaries, medical marijuana production facilities, and safety compliance facilities; and

(7) A statement of taxes and fees collected and an accounting for how those revenues were disbursed.

**39-10019. CONFIDENTIALITY.**

(1) Information received and records kept by the Department for purposes of administering this Chapter are confidential and may be disclosed only as authorized by this Chapter, including information and records related to:

(a) Applications or renewals, their contents, and supporting information submitted by qualifying patients and designated caregivers, including information regarding qualified patient's practitioners.

(b) Applications or renewals, their contents, and supporting information submitted by or on behalf of medical marijuana organizations operating in compliance with this Chapter.

(c) The individual names and other identifying information of persons to whom the Department has issued registry identification cards.

(2) Any dispensing information kept or maintained by medical marijuana organizations or by the Department must identify cardholders and medical marijuana organizations by registry identification number and not contain names or other personally identifying information.

(3) Confidential information may be disclosed as necessary for authorized Department employees to perform official duties of the Department pursuant to this Chapter, including the verification of registration certificates and registry identification cards pursuant to section 39-10011 or submission of the section 39- 10019 report to the legislature.

(4) Nothing in this section precludes the following notifications:

(a) Department employees may notify state or local law enforcement about falsified or fraudulent information submitted to the Department.

(b) The Department may notify state or local law enforcement about apparent criminal violations of this Chapter.

(c) Department employees may notify the board of medical examiners if they have reason to believe that a practitioner provided a written recommendation without completing a full assessment of the

qualifying patient's medical history and current medical condition, or if the Department has reason to believe the practitioner violated the standard of care, or for other suspected violations of this Chapter.

### **39-10020. PROTECTIONS FOR THE MEDICAL USE OF MARIJUANA.**

(1) A cardholder who possesses a valid registry identification card is not subject to arrest, prosecution, or penalty in any manner, or denial of any right or privilege, including any civil penalty or disciplinary action by a court, or occupational or professional licensing board or bureau, for:

(a) The medical use of marijuana pursuant to this Chapter, if the cardholder does not possess more than the allowable amount of marijuana, and, if the cardholder is allowed to cultivate marijuana, the marijuana plants are either cultivated in an enclosed, locked space or are being transported in accordance with this Act;

(b) Payment by a registered qualifying patient and receipt by the qualifying patient's registered designated caregiver for goods or services provided in assisting with the registered qualifying patient's medical use of marijuana; (c) Transferring marijuana to a safety compliance facility for testing;

(d) Compensating a medical marijuana dispensary or a safety compliance facility for goods or services provided; or

(e) Offering or providing marijuana to a cardholder for a registered qualifying patient's medical use, to a nonresident cardholder, or to a medical marijuana dispensary if nothing of value is transferred in return and the person giving the marijuana does not knowingly cause the recipient to possess more than the allowable amount of marijuana.

(f) A nonresident cardholder shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, for the medical use of marijuana pursuant to this Chapter if the nonresident cardholder does not possess more than the allowable amount of marijuana.

(2) There is a presumption in criminal, civil, and administrative court proceedings that a cardholder is engaged in the medical use of marijuana pursuant to this Chapter if the person is in possession of a registry identification card and an amount of marijuana that does not exceed the allowable amount. The presumption may be rebutted by evidence in any case that conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition pursuant to this Chapter.

(3) A practitioner may not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by the State Board of Medicine or by any other business, occupational, or professional licensing board or bureau, based solely on providing written recommendations or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition, but nothing in this Chapter prevents a professional licensing board from sanctioning a practitioner for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

(4) A holder of a professional or occupational license may not be subject to professional discipline solely for providing advice or services related to marijuana activities that are allowed under state law pursuant to this Chapter or denied a license based on previous employment related to marijuana activities that are allowed under state law pursuant to this Chapter.

(5) No person may be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

(a) Providing or selling marijuana paraphernalia to a cardholder, nonresident cardholder, or to a medical marijuana organization upon presentation of a valid registry identification card or registration certificate;

(b) Being in the presence or vicinity of the medical use of marijuana that is exempt from criminal penalties under this Chapter; or

(c) Assisting a registered qualifying patient with administering marijuana as authorized by this Chapter.

(d) Allowing a person's property to be used for activities that are exempt from criminal penalties by this Chapter.

(6) A medical marijuana dispensary or a medical marijuana dispensary agent is not subject to prosecution, search, or inspection, except by the Department pursuant to 39-10012(6), seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Chapter and Department rule to:

(a) Purchase or otherwise acquire marijuana from medical marijuana production facilities or from other medical marijuana dispensaries;

(b) Acquire, possess, or purchase any marijuana related supplies or equipment;

(c) Possess, deliver, transfer, or transport marijuana or related supplies and educational materials to or from other medical marijuana organizations;

(d) Provide or otherwise transfer marijuana to a safety compliance facility or to compensate a safety compliance facility for services or goods provided;

(e) Accept marijuana offered by a registered qualifying patient or a registered designated caregiver if nothing of value is transferred in return; or



(f) Dispense, supply, or sell marijuana or related supplies and educational materials to registered qualifying patients, to registered designated caregivers on behalf of registered qualifying patients, or to other medical marijuana dispensaries.

(7) A medical marijuana production facility or a medical marijuana production facility agent is not subject to prosecution, search, or inspection, except by the Department pursuant to 39-10012(6), seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Chapter and Department rule to:

(a) Acquire, possess, plant, propagate, cultivate, grow, harvest, produce, process, manufacture, compound, convert, prepare, pack, repack, or store marijuana;

(b) Acquire, possess, or purchase any marijuana related supplies or equipment.

(c) Purchase or otherwise acquire marijuana from another medical marijuana production facility or from a medical marijuana dispensary;

(d) Deliver, transfer, transport, supply, or sell marijuana to a medical marijuana dispensary; or

(e) Provide or otherwise transfer marijuana to a safety compliance facility or to compensate a safety compliance facility for services or goods provided.

(8) A safety compliance facility or a safety compliance facility agent is not subject to prosecution, search, or inspection, except by the Department pursuant to 39-10012(6), seizure, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to this Chapter and Department rule to provide the following services:

(a) Acquiring, possessing, or transporting marijuana obtained from registered cardholders or medical marijuana organizations;

(b) Returning the Marijuana to the registered cardholder or medical marijuana organization from whom it was obtained;

(c) Producing or selling educational materials related to medical marijuana;

(d) Possessing, producing, selling, or transporting equipment or materials other than marijuana to medical marijuana organizations or to cardholders, including lab equipment and packaging materials;

(e) Testing marijuana, including for potency, pesticides, mold, or contaminants;

(f) Providing training to cardholders; or

(g) Receiving compensation for services or goods provided under this Chapter.

(9) Property, including all interests in the property, otherwise subject to forfeiture under state or local law that is possessed, owned, or used in any activity permitted under this Chapter is not subject to seizure or forfeiture. This subsection does not prevent civil or criminal forfeiture if the basis for the forfeiture is unrelated to the medical use of marijuana.

(10) Mere possession of, or application for, a registry identification card may not constitute probable cause or reasonable suspicion, nor may it be used to support the search of the person or property of the person possessing or applying for the registry identification card. The possession of, or application for, a registry identification card does not preclude the existence of probable cause if probable cause exists on other grounds.

### **39-10021. DISCRIMINATION PROHIBITED.**

(1) Except as provided in 39-10002 and 39-10003, no school, landlord, nursing facility, intermediate care facility, hospice house, hospital, or other type of residential care or assisted living facility may refuse to enroll, admit, or lease to and may not otherwise penalize a person solely for the person's status as a cardholder or for engaging in conduct allowed under this Chapter, unless doing so would violate federal law or regulations or cause the school, landlord, nursing facility, intermediate care facility, hospice house, hospital, or other type of residential care or assisted living facility to lose a monetary or licensing-related benefit under federal law.

(2) Except as provided in this Chapter, a registered qualifying patient who uses marijuana for medical purposes shall be afforded all the same rights, privileges, and protections under state and local law as the individual would be afforded if the individual were solely prescribed pharmaceutical medications, including:

(a) Any interaction with the person's employer;

(b) Drug testing by the person's employer; or

(c) Drug testing required by a state or local law enforcement agency or government official.

(3) The rights, privileges, and protections provided by subsection (2) do not apply to the extent that they conflict with an employer's obligations under federal law or regulations or to the extent that they would disqualify an employer from a monetary or licensing-related benefit under federal law or regulations.

(4) No employer is required to allow the ingestion of marijuana in any workplace or to allow any employee to work while under the influence of marijuana. A registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment.

(5) For the purposes of medical care, including organ and tissue transplants, a registered qualifying patient's use of marijuana in accordance with this Chapter is considered the equivalent of the authorized use of any other medication used at the direction of a practitioner and does not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.

(6) A person's status as a cardholder, or for engaging in conduct allowed under this Chapter, may not be used to deny custody of, or visitation rights, or parenting time with a minor.

(7) A person's status as a cardholder, or for conduct allowed under this Chapter may not be used by a state or local agency to restrict, revoke, suspend, or otherwise infringe upon a person's right to own or possess a firearm or any related firearms certification.

(8) No school, landlord, or employer may be penalized or denied any benefit under state law for enrolling, leasing to, or employing a cardholder.

**39-10022. AFFIRMATIVE DEFENSE.**

(1) Except as provided in section 39-10002, a qualifying patient, a visiting qualifying patient, or a caregiver may assert the medical purpose for using marijuana as a defense to any prosecution of an offense involving marijuana intended for a qualifying patient's or visiting qualifying patient's medical use so long as the evidence shows that:

(a) A person who is licensed with authority to prescribe drugs to humans in the state of the patient's residence has stated that, in his or her professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide practitioner-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition;

(b) The patient and the patient's caregiver, if any, were collectively in possession of the allowable amount of marijuana;

(c) All marijuana plants were contained in an enclosed locked facility; and

(d) The patient and the patient's caregiver, if any, were engaged in the medical use of marijuana solely to treat or alleviate the patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

(2) The defense shall not prevail if the state prosecutor proves that the person has a registry identification card revoked.

**39-10023. REVOCATION.**

(1) The Department may, after investigation and opportunity at a hearing at which the medical marijuana organization has an opportunity to be heard, fine a registered organization, or suspend or revoke a registration certificate for violations of this Chapter or any rules promulgated pursuant to this Chapter.

(2) The Department shall immediately revoke the registry identification card of any cardholder who sells marijuana to a person who is not allowed to possess marijuana under this Chapter.

(3) The Department may revoke the registry identification card of any cardholder who knowingly violates this Chapter.

(4) Revocation is subject to review pursuant to Chapter 52, Title 67, Idaho Code.

**39-10024. ENFORCEMENT OF THIS ACT.** If the Department fails to adopt rules to implement this Chapter within one hundred twenty (120) days of the effective date of this Chapter, any citizen may commence a mandamus action in the district court to compel the Department to perform the actions mandated under this Chapter.

**SECTION 3. That Section 74-106, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SUBSECTION to be known and designated as Subsection 74-106(35), Idaho Code, and to read as follows:**

74-106(35) Information and records maintained by the Department of Health and Welfare for purposes of administering chapter 100 of title 39, the Idaho Medical Marijuana Act, as provided in section 39-10019, Idaho Code.

**SECTION 4. Conflicting measures**

In the event that this measure and another measure concerning the legalization, control, regulation, or taxation of marijuana for medical use appear on the same statewide election ballot, the provisions of the other measure shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.

**SECTION 5. Severability**

The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

**SECTION 6. Effective Date**

This act shall be in effect on and after January 1, 2025, and be in full effect on and after May 1, 2025.

**END.**

## **Funding Statement**

### **Funding Source Statement for the Idaho Medical Marijuana Act of 2024**

Pursuant to Chapter 34, Title 18, Idaho Code, Section 34-1812, we, the proponents of the Idaho Medical Marijuana Act of 2024, submit this document proposing the “funding source for the cost of implementing the measure.”

### **Funding Sources**

The Idaho Medical Marijuana Act of 2024 is designed to be completely self-funded, requiring no additional expenditures from the General Fund. The legislature is empowered to set fees to cover all program costs.

#### **Medical Marijuana Patient & Caregiver Fees**

Medical marijuana patient and caregiver application and renewal fees. Our measure [§39-10004] requires the Department of Health & Welfare to “Establish application and renewal fees for registry identification cards and registration certificates” [(1) (k)] within 120 days of the effective date [(1)].

Those fees “must generate revenues sufficient to implement and administer this Chapter” [(1)(k)(i)]. Those fees are set at a statutory maximum of one hundred dollars (\$100) per annum, adjusted for inflation, “unless the Department determines a reasonable greater fee is necessary to carry out its responsibilities under this Chapter.” [(1)(k)(iii)]

#### **Medical Marijuana Organizations Fees**

Application and licensing fees for medical marijuana organizations (medical marijuana dispensaries, production facilities, and safety compliance facilities). Our measure [§39-10004] requires the Department of Health & Welfare to determine the “form and content of marijuana organization registration and renewal applications” [(1)(b)] within 120 days of the effective date [(1)].

Our measure sets no boundaries on the legislature on determining those fees.

#### **Medical Marijuana Taxation**

Medical marijuana to be sold from dispensaries is to be taxed at four percent (4%) [§39-10016(1)]. “The tax revenue shall be disbursed to the Department to cover reasonable costs incurred by the Department in carrying out its duties under this Chapter.” [§39-10016(2)].

100 Word Fiscal Impact  
Sept. 7, 2022<sup>1</sup>

Utah was the primary comparison for use, and per-user revenue estimates.

The 120 day requirement augments costs. At state level, first year costs could be \$8.6m at DHW; corrections/courts costs \$0.54m, with local costs at 7x; tax commission costs \$0.86m. Tax revenue (at 4%+ 6% = 10%) is expected under \$0.4m in the first year, increasing to \$3.1-3.4m in the second year, undershooting DHW rule-making costs. Third fiscal-year tax revenues could cover ongoing costs. User fees are expected to be: \$0.6-1m, then \$2-2.5m, with subsequent years higher.

Fees (dispensaries, inspections) could be set at substantial sums; they're outside this analysis.

#### Assumptions

The major assumptions leading to the figures in the estimated fiscal impact are:

- (1) The deadlines imposed by the ballot initiative are unaltered, forcing ID Department of Health and Welfare (DHW) to begin implementation prior to legislative allocation of funding or positions (FTE).
- (2) The experience of nearby states which have legalized some form of medical marijuana are indicative of the experience Idaho would have should the ballot initiative pass, particularly in costs.
- (3) The population which would use Idaho's newly established medical marijuana facilities would be similar to those of nearby states, both in proportion and usage.
- (4) There is an assumption that 12 quarters would be needed for the full bulk of the user base to acquire access to the facility --- this allows for processing times as well as patient-caregiver interactions, which are a prerequisite under the ballot initiative.

#### Description

Earlier estimates were adjusted using the expected medical inflation, with that medical inflation trajectory due to HIS. This gives the cost of the 100 word fiscal impact. The longer the data series from Utah adjusted the excise and sales tax trajectory slightly upwards, even accounting for inflation, although the change was < 2%.

In the event that the ballot initiative passes, Idaho could see a direct acquisition, retraining, and replacement costs of \$0.5-0.7 Million for corrections, law enforcement, and courts at the state level, to be incurred before the close of the first fiscal year in which the passed ballot would be law. Local level estimates are placed at 7 times this. DHW expected to see costs of \$8 million for setting up the programs outlined in the initiative. Contemporary revenue through tax receipts would be expected to be under \$0.4 million (both sales and excise tax). The costs for DHW are likely to bleed across the close of the first fiscal year and into the second as the ballot initiative requires significant rule-making. Second year costs to DHW were seen as likely to be as high as \$6 million.

Across the second fiscal year (fiscal years run July through June) additional revenue via tax could be expected to total \$3.1 with \$1.2 million due to excise tax and the remainder due to sales tax. The excise tax portion would, with DHW fees as allowed in the ballot initiative, defray costs.

Across the third fiscal year, tax receipts could be expected to cover ongoing costs under most scenarios.

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<sup>1</sup> Updated from the Feb. 5, 2021 for inflation and additional Utah data

