HOUSE BILL NO. 701

INTRODUCED BY M. HOPKINS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE REGULATION AND TAXATION OF MARIJUANA; TRANSFERRING AUTHORITY OVER THE LICENSING, CULTIVATION, AND SALE OF MEDICAL MARIJUANA TO REGISTERED CARDHOLDERS TO THE DEPARTMENT OF REVENUE ; CREATING SEPARATE LICENSE CATEGORIES FOR CULTIVATION, MANUFACTURING, DISPENSING, AND TRANSPORTING MARIJUANA; PROVIDING FOR EIGHT COMBINED-USE MARIJUANA LICENSES; CREATING A MARIJUANA WORKER PERMIT; ~~PROVIDING FOR A LOCAL-OPTION MARIJUANA EXCISE TAX;~~ REQUIRING LOCAL GOVERNMENT APPROVAL FOR A MARIJUANA BUSINESS TO OPERATE IN A LOCAL JURISDICTION; PROVIDING AN APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 5-5-227, 7-22-2101, 15-64-101, 15-64-102, 15-64-103, 15-64-104, 15-64-105, 15-64-106, 15-64-111, 15-64-112, 16-12-101, 16-12-102, 16-12-104, 16-12-105, 16-12-106, 16-12-107, 16-12-108, 16-12-109, 16-12-110, 16-12-111, 16-12-112, 16-12-201, 16-12-202, 16-12-203, 16-12-204, 16-12-206, 16-12-207, 16-12-208, 16-12-209, 16-12-210, 16-12-211, 16-12-301, 16-12-302, 17-6-606, 17-6-610, 18-7-101, 37-1-136, 37-1-316, 37-3-203, 39-2-210, 39-2-313, 39-71-407, 41-5-216, 44-4-1205, 45-9-101, 45-9-102, 45-9-103, 45-9-110, 45-9-127, 45-9-203, 45-10-103, 45-10-107, 46-18-202, 50-46-302, 50-46-303, 50-46-307, 50-46-319, 50-46-345, 50-46-346, 50-46-347, 53-6-1201, 53-21-1207, 61-8-402, 61-8-404, 61-8-405, 61-8-409, 61-8-442, 61-11-101, AND 80-1-104, MCA; AMENDING SECTION 56, INITIATIVE MEASURE NO. 190, APPROVED NOVEMBER 3, 2020; REPEALING SECTIONS 16-12-205, 16-12-401, 16-12-402, 16-12-403, 16-12-404, 16-12-405, 16-12-406, 16-12-407, 16-12-408, 50-46-301, 50-46-302, 50-46-303, 50-46-304, 50-46-305, 50-46-307, 50-46-308, 50-46-309, 50-46-310, 50-46-311, 50-46-312, 50-46-317, 50-46-318, 50-46-320, 50-46-326, 50-46-327, 50-46-328, 50-46-329, 50-46-330, 50-46-331, 50-46-332, 50-46-339, 50-46-340, 50-46-341, 50-46-342, 50-46-343, 50-46-344, 50-46-345, 50-46-346, AND 50-46-347, MCA; REPEALING SECTIONS 37 AND 52, INITIATIVE MEASURE NO. 190, APPROVED NOVEMBER 3, 2020; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

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

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NEW SECTION. **Section 1. Hotline.** (1) The department shall create and maintain a hotline to receive reports of suspected abuse of the provisions of this chapter.

(2) The department may:

(a) investigate reports of suspected abuse of the provisions of this chapter; or

(b) refer reports of suspected abuse to the law enforcement agency having jurisdiction in the area where the suspected abuse is occurring.

NEW SECTION. **Section 2. Department to conduct background checks.** (1) In addition to any other requirement imposed under this chapter, before issuing any license under this chapter the department shall conduct:

(a) a fingerprint-based background check meeting the requirements for a fingerprint-based background check by the department of justice and the federal bureau of investigation in association with an application for initial licensure and every 3 years thereafter; and

(b) a name-based background check in association with an application for initial licensure and each year thereafter except years that an applicant is required to submit fingerprints for a fingerprint-based background check.

(2) For the purpose of the background records check required under subsection (1), the department shall obtain fingerprints from each individual listed on an application submitted under this chapter and each individual who has a controlling beneficial ownership or financial interest in the license or prospective license, including:

(a) each partner of an applicant that is a limited partnership;

(b) each member of an applicant that is a limited liability company;

(c) each director and officer of an applicant that is a corporation;

(d) each individual who holds a 5% financial interest in the license applicant or is a controlling beneficial owner of the person applying for the license; and

(e) each individual who is a partner, member, director, or officer of a legal entity that holds a 5% financial interest in the license applicant or is a controlling beneficial owner of the person applying for the

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license.

(3) (a) Except as provided in subsection (3)(b), an employee of a marijuana business shall undergo a criminal background check prior to beginning employment.

(b) An employee of a former medical marijuana licensee in good standing with the department as of [the effective date of this section] shall undergo a criminal background check within 90 days of [the effective date of this section].

(4) The department may establish procedures for obtaining fingerprints for the fingerprint-based and name-based background checks required under this section.

NEW SECTION. **Section 3. Licensing of marijuana transporters.** (1) (a) A marijuana transporter license may be issued to a person to provide logistics, distribution, delivery, and storage of marijuana and marijuana products. A marijuana transporter license is valid for 2 years. A licensed marijuana transporter is responsible for the marijuana and marijuana products once it takes control of the marijuana or marijuana product.

(b) A marijuana transporter may contract with multiple licensed marijuana businesses.

(c) On or after March 1, 2022, and except as otherwise provided in this section, all persons who transport marijuana or marijuana products shall hold a valid marijuana transporter license. The department shall begin accepting applications on or after January 1, 2022. The department may allow for a reasonable grace period for complying with this requirement.

(d) The department shall establish by rule the requirements for licensure, and the applicable fee for a marijuana transporter license or the renewal of a transporter license. The department may not license a person to be a marijuana transporter if the applicant meets any of the criteria established for denial of a license under 16-12-203(2).

(2) A person who obtains a testing laboratory license and any other person who is not licensed under this chapter must apply for and obtain a marijuana transporter license in order to transport marijuana or marijuana products.

(3) A registered cardholder or consumer is not required to possess a marijuana transporter license when purchasing marijuana or marijuana products at a dispensary.

(4) A person who obtains a cultivator license, manufacturer license, adult-use dispensary license, or medical marijuana dispensary license or is an employee of one of those licensees, may:

(a) transport marijuana or marijuana products between other licensed premises without a transporter license so long as such transportation:

(i) complies with rules implementing the seed-to-sale tracking system set forth in 16-12-105; and

(ii) includes a printed manifest containing information as required by the department; and

(b) deliver marijuana from a dispensary to a registered cardholder provided that the person delivering the marijuana or marijuana products:

(i) complies with rules adopted by the department; and

(ii) includes a printed delivery manifest from a dispensary to a registered cardholder containing the registered cardholder's address and cardholder number and the dispensary's address and license number.

(5) (a) A marijuana transporter licensee may maintain a licensed premises to temporarily store marijuana and marijuana products and to use as a centralized distribution point.

(b) The licensed premises must be located in a jurisdiction that permits the operation of a marijuana business and comply with rules adopted by the department.

(c) A marijuana transporter may store and distribute marijuana and marijuana products from this location. A storage facility must meet the same security requirements that are required to obtain a license under this chapter.

(6) A marijuana transporter shall use the seed-to-sale tracking system developed pursuant to 16-12-105 to create shipping manifests documenting the transport of retail marijuana and retail marijuana products throughout the state.

(7) A marijuana transporter may deliver marijuana or marijuana products to licensed premises only and may not make deliveries of marijuana or marijuana products to individual consumers or registered cardholders.

(8) A person delivering marijuana or marijuana products for a marijuana transporter must possess a valid marijuana worker permit provided for under [section 7] and be a current employee of the marijuana transporter licensee.

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NEW SECTION. **Section 4. Licensing of cultivators.** (1) (a) The department shall license cultivators according to a tiered canopy system. All cultivation that is licensed under this chapter may only occur at an indoor cultivation facility.

(b) The system shall include, at a minimum, the following license types:

(i) A micro tier canopy license allows for a canopy of up to 250 square feet at one indoor cultivation facility.

(ii) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one indoor cultivation facility.

(iii) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two indoor cultivation facilities.

(iv) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three indoor cultivation facilities.

(v) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four indoor cultivation facilities.

(vi) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five indoor cultivation facilities.

(vii) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five indoor cultivation facilities.

(viii) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five indoor cultivation facilities.

(ix) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five indoor cultivation facilities.

(x) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six indoor cultivation facilities.

(xi) A tier 10 canopy license allows for a canopy of up to 30,000 square feet at up to seven indoor cultivation facilities.

(c) A cultivator shall demonstrate that the local government approval provisions in 16-12-301 have

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been satisfied for the jurisdiction where each proposed indoor cultivation facility or facilities is or will be located.

(d) When evaluating an initial or renewal license application, the department shall evaluate each proposed indoor cultivation facility for compliance with the provisions of 16-12-207 and 16-12-210.

(e) A cultivator may apply to advance to the next licensing tier in conjunction with a regular renewal application by demonstrating that its proposed additional or expanded indoor cultivation facility or facilities are located in a jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied.

(2) The department is authorized to create additional tiers as necessary.

(3) The department may adopt rules:

(a) for inspection of proposed indoor cultivation facilities under subsection (1); and

(b) for investigating owners or applicants for a determination of financial interest; and

(c) in consultation with the department of agriculture and based on well-supported science, to require licensees to adopt practices consistent with the prevention, introduction, and spread of insects, diseases, and other plant pests into Montana.

(4) Initial licensure and annual fees for these licensees are:

(a) $1,000 for a cultivator with a micro tier canopy license;

(b) $2,500 for a cultivator with a tier 1 canopy license;

(c) $5,000 for a cultivator with a tier 2 canopy license;

(d) $7,500 for a cultivator with a tier 3 canopy license;

(e) $10,000 for a cultivator with a tier 4 canopy license;

(f) $13,000 for a cultivator with a tier 5 canopy license;

(g) $15,000 for a cultivator with a tier 6 canopy license;

(h) $17,500 for a cultivator with a tier 7 canopy license;

(i) $20,000 for a cultivator with a tier 8 canopy license;

(j) $23,000 for a cultivator with a tier 9 canopy license; and

(k) $27,000 for a cultivator with a tier 10 canopy license.

(5) The fee required under this part may be imposed based only on the tier of licensure and may not be applied separately to each indoor cultivation facility used for cultivation under the licensure level.

NEW SECTION. **Section 5. Licensing of dispensaries.** (1) Except as provided in 16-12-201(2), an applicant for a dispensary license shall demonstrate that the local government approval provisions in 16-12-301 have been satisfied in the jurisdiction where each proposed dispensary is located.

(2) When evaluating an initial or renewal application, the department shall evaluate each proposed dispensary for compliance with the provisions of 16-12-207 and 16-12-210.

(3) An adult-use dispensary licensee may operate at a shared location with a medical marijuana dispensary if the adult-use dispensary and medical marijuana dispensary are owned by the same person.

(4) A medical marijuana dispensary is authorized to sell exclusively to registered cardholders marijuana, marijuana products, and live marijuana plants.

(5) An adult-dispensary is authorized to sell marijuana or marijuana products to consumers or registered cardholders.

(6) The department shall charge a dispensary license fee for an initial application and at each renewal. The dispensary license fee is $5,000 for each location that a licensee operates as an adult-use dispensary or a medical marijuana dispensary.

(7) The department may adopt rules:

(a) for inspection of proposed dispensaries;

(b) for investigating owners or applicants for a determination of financial interest; and

(c) establishing or limiting the THC content of the marijuana or marijuana products that may be sold at an adult-use dispensary or medical marijuana dispensary.

(8) (a) Marijuana and marijuana products sold at a dispensary are regulated and sold on the basis of the concentration of THC in the products and not by weight.

(b) Except as provided in subsection (8)(c), for purposes of this chapter, a single package is limited to:

(i) for marijuana sold as flower, 1 ounce of usable marijuana. The total potential psychoactive THC of marijuana flower may not exceed 35%.

(ii) for a marijuana product sold as a capsule, no more than 100 milligrams of THC per capsule and no more than 800 milligrams of THC per package.

(iii) for a marijuana product sold as a tincture, no more than 800 milligrams of THC;

(iv) for a marijuana product sold as an edible or a food product, no more than 100 milligrams of THC. A single serving of an edible marijuana product may not exceed 10 milligrams of THC.

(v) for a marijuana product sold as a topical product, a concentration of no more than 6% THC and no more than 800 milligrams of THC per package;

(vi) for a marijuana product sold as a suppository or transdermal patch, no more than 100 milligrams of THC per suppository or transdermal patch and no more than 800 milligrams of THC per package; and

(vii) for any other marijuana product, no more than 800 milligrams of THC.

(c) A dispensary may sell marijuana or marijuana products having higher THC potency levels than described in subsection (8) to registered cardholders.

(9) A licensee or employee is prohibited from conducting a transaction that would result in a consumer or registered cardholder exceeding the personal possession amounts set forth in 16-12-106 and [section ~~21~~ 16].

NEW SECTION. **Section 6. Combined-use marijuana licensing -- requirements.** (1) The department may issue a total of eight combined-use marijuana licenses to entities that are:

(a) a federally recognized tribe located in the state; or

(b) a business entity that is majority-owned by a federally recognized tribe located in the state.

(2) A combined-use marijuana license consists of one tier 1 canopy license and one dispensary license allowing for the operation of a dispensary. Cultivation and dispensary facilities must be located at the same licensed premises.

(3) A combined-use marijuana licensee shall operate its cultivation and dispensary facilities on land that is located:

(a) within 25 air-miles of the exterior boundary of the associated tribal reservation; and

(b) in a county that has satisfied the local government approval provisions in 16-12-301.

(4) An applicant under this section must satisfy all licensing requirements under this chapter and is subject to all fees and taxes associated with the cultivation and sale of marijuana or marijuana products provided for in this chapter.

(5) A license granted under this section must be operated in compliance with all requirements imposed under this chapter.

(6) After a tribe or a majority-owned business of that tribe is licensed under this section, that tribe or another majority-owned business of that tribe may not obtain another combined-use license until the prior license is relinquished, lapses, or is revoked by the department.

NEW SECTION. **Section 7. Marijuana worker permit -- requirements.** (1) A marijuana worker permit is required for an employee who performs work for or on behalf of a marijuana business if the individual participates in any aspect of the marijuana business.

(2) (a) Except as provided in subsection (2)(b), a marijuana business may not allow an employee to perform any work at the licensed premises until it has verified that that the employee has obtained a valid marijuana worker permit issued in accordance with this chapter.

(b) An employee of a former medical marijuana licensee in good standing with the department as of [the effective date of this section] shall obtain a marijuana worker permit within 90 days of [the effective date of this section].

(3) An applicant for a marijuana worker permit shall submit:

(a) an application on a form prescribed by the department with information including the applicant's:

(i) name;

(ii) mailing address;

(iii) date of birth;

(iv) signature; and

(v) response to conviction history questions requested by the department;

(b) a copy of a driver's license or identification card issued by one of the fifty states in the United States or a passport;

(c) proof of having passed any training required by the department; and

(d) a fee established by the department.

(4) (a) Except as provided in subsection (4)(b), an application that does not contain the elements set forth in subsection (3) is incomplete.

(b) The department may review an application prior to receiving the fee but may not issue a permit until the fee is received.

(5) The department shall deny an initial or renewal application if the applicant:

(a) is not 18 years of age or older;

(b) has had a marijuana license or worker permit revoked for a violation of this chapter or any rule adopted under this chapter within 2 years of the date of the application;

(c) has violated any provision of this chapter; or

(d) makes a false statement to the department.

(6) An employee of a licensee shall carry the employee's worker permit at all times when performing work on behalf of a marijuana business.

(7) A person who holds a marijuana worker permit must notify the department in writing within 10 days of:

(a) a conviction for a felony;

(b) the issuance of any citation for violating a marijuana law imposed under this chapter or the marijuana laws of any other state; or

(c) the issuance of any citation for selling or dispensing alcohol or tobacco products to a minor.

~~NEW SECTION. **Section 8. Local-government taxing authority -- specific delegation.** As required by 7-1-112, [sections 8 through 12] specifically delegate to the qualified electors of a county the power to authorize their county to impose a local-option marijuana excise tax within the corporate boundary of the county.~~

~~NEW SECTION. **Section 9. Limit on local-option marijuana excise tax rate -- goods subject to tax.** (1) The rate of the local-option marijuana excise tax must be established by the election petition or resolution provided for in [section 10], and the rate may not exceed 5%.~~

~~(2) The local-option marijuana excise tax is a tax on the retail value of all marijuana and marijuana products sold at an adult-use dispensary or medical marijuana dispensary within a county.~~

~~(3) If a county imposes a local-option marijuana excise tax:~~

~~(a) 50% of the resulting tax revenue must be retained by the county;~~

~~(b) 45% of the resulting tax revenue must be apportioned to the municipalities on the basis of the ratio of the population of the city or town to the total county population; and~~

~~(c) the remaining 5% of the resulting tax revenue must be retained by the department to defray costs associated with administering [sections 8 through 12]. The funds retained by the department under this subsection (3)(c) must be deposited into the marijuana state special revenue account established under 16-12-111.~~

~~(4) For purposes of this section, tax revenue means the combined taxes collected under any local-option marijuana excise tax collected on retail sales within the county.~~

~~NEW SECTION. **Section 10. Local-government excise tax -- election required -- procedure -- notice.** (1) A county that has permitted an adult-use dispensary or medical marijuana dispensary to operate within its borders may not impose or, except as provided in this section, amend or repeal a local-option marijuana excise tax unless the local-option marijuana excise tax question has been approved by a majority of the qualified electors voting on the question.~~

~~(2) The local-option marijuana excise tax question may be presented to the qualified electors of a county by a petition of the electors as provided in 7-5-131, 7-5-132, 7-5-134, 7-5-135, and 7-5-137 or by a resolution of the governing body of the county.~~

~~(3) The petition or resolution referring the taxing question must state:~~

~~(a) the rate of the tax, which may not exceed 5% of the retail sale of marijuana or marijuana products occurring at an adult-use dispensary or medical marijuana dispensary;~~

~~(b) the date when the tax becomes effective, which may not be earlier than 90 days after the election; and~~

~~(c) the purposes that may be funded by the tax revenue.~~

~~(4) On receipt of an adequate petition, the county's governing body shall hold an election in accordance with Title 13, chapter 1, part 5.~~

~~(5) (a) Before the local-option marijuana excise tax question is submitted to the electorate, the county shall provide notice of the goods subject to the local-option marijuana excise tax by a method described in 13-~~

~~1-108.~~

~~(b) The notice must be given two times, with at least 6 days separating the notices. The first notice must be no more than 45 days prior to the election, and the last notice must be no less than 30 days prior to the election.~~

~~(6) Notice of the election must be given as provided in 13-1-108 and include the information listed in subsection (3) of this section.~~

~~(7) The question of the imposition of a local-option marijuana excise tax may not be placed before the qualified electors more than once in any fiscal year.~~

~~NEW SECTION.~~ ~~**Section 11. Tax administration.** (1) Not less than 90 days prior to the date that the local-option marijuana excise tax becomes effective, the county shall notify the department of the results of the election and coordinate with the department to facilitate the administration and collection of the local-option marijuana excise taxes.~~

~~(2) The department shall establish by rule:~~

~~(a) the times that taxes collected by businesses are to be remitted to the department;~~

~~(b) the office or employee of the department responsible for receiving and accounting for the local-option marijuana excise tax receipts;~~

~~(c) the office or employee of the department responsible for enforcing the collection of local-option marijuana excise taxes and the methods and procedures to be used in enforcing the collection of local-option marijuana excise taxes due; and~~

~~(d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:~~

~~(i) criminal penalties not to exceed a fine of $1,000 or 6 months' imprisonment, or both;~~

~~(ii) civil penalties if the department prevails in a suit for the collection of local-option marijuana excise taxes, not to exceed 50% of the local-option marijuana excise taxes found due plus the costs and attorney fees incurred by the department in the action;~~

~~(iii) revocation of an adult-use dispensary license or medical marijuana dispensary license held by the offender; and~~

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~~(iv) any other penalties that may be applicable for violation of an ordinance.~~

~~(3) The department's rules may also include:~~

~~(a) further clarification and specificity in the categories of goods that are subject to the local-option marijuana excise tax;~~

~~(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to withhold up to 5% of the local-option marijuana excise taxes collected to defray their costs for the administration of the tax collection.~~

~~(c) other administrative details necessary for the efficient and effective administration of the tax.~~

~~(4) A county and the department may exchange information collected under the provisions of this chapter that is necessary to implement and administer a local-option tax or the tax collected under Title 15, chapter 64, part 1.~~

~~NEW SECTION. **Section 12. Use of local-option marijuana excise tax revenue.** Unless otherwise restricted, a county or municipality may appropriate and expend revenue derived from a local-option marijuana excise tax for any activity, undertaking, or administrative service that the municipality is authorized by law to perform, including costs resulting from the imposition of the tax or due to administrative burdens imposed on the municipality as a result of licensing or regulatory requirements imposed in this chapter.~~

NEW SECTION. **Section 8. Unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in motor vehicle on highway.** (1) Except as provided in subsection (2), a person commits the offense of unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in a motor vehicle if the person knowingly possesses marijuana, marijuana products, or marijuana paraphernalia, as those terms are defined in 16-12-102, within the passenger area of a motor vehicle on a highway.

(2) This section does not apply to marijuana, marijuana products, or marijuana paraphernalia:

(a) purchased from a dispensary and that remains in its unopened, original packaging;

(b) in a locked glove compartment or storage compartment;

(c) in a motor vehicle trunk or luggage compartment or in a truck bed or cargo compartment;

(d) behind the last upright seat of a motor vehicle that is not equipped with a trunk; or

(e) in a closed container in the area of a motor vehicle that is not equipped with a trunk and that is not normally occupied by the driver or a passenger.

(3) (a) A person convicted of the offense of unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in a motor vehicle shall be fined an amount not to exceed $100.

(b) A violation of this section is not a criminal offense within the meaning of 3-1-317, 3-1-318, 45-2-101, 46-18-236, 61-8-104, or 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of this section against the insured or increase premiums because of the violation. The surcharges provided for in 3-1-317, 3-1-318, and 46-18-236 may not be imposed for a violation of this section.

NEW SECTION. **Section 9. Purpose.** The purpose of [sections ~~14 through 28~~ 9 through 23] is to:

(1) provide a regulatory system for providing marijuana for the use of individuals with debilitating medical conditions, including posttraumatic stress disorder, in order to alleviate the symptoms of the debilitating medical condition;

(2) allow for the limited cultivation, manufacture, delivery, and possession of marijuana as permitted by this chapter;

(3) allow persons to assist registered cardholders with the cultivation of marijuana and manufacture of marijuana products permitted by this chapter.

(4) provide for a registry of individuals with debilitating medical conditions entitled to purchase marijuana and marijuana products at the tax rate specified in 15-64-102; and

(5) provide the process for obtaining a registry identification card.

NEW SECTION. **Section 10. Definitions.** As used in [sections ~~14 through 28~~ 9 through 23], the following definitions apply:

(1) "Referral physician" means an individual who:

(a) is licensed under Title 37, chapter 3; and

(b) is the physician to whom a patient's treating physician has referred the patient for physical examination and medical assessment.

(2) "Standard of care" means, at a minimum, the following activities when undertaken in person or through the use of telemedicine by a patient's treating physician or referral physician if the treating physician or referral physician is providing written certification for a patient with a debilitating medical condition:

(a) obtaining the patient's medical history;

(b) performing a relevant and necessary physical examination;

(c) reviewing prior treatment and treatment response for the debilitating medical condition;

(d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating medical condition;

(e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;

(f) monitoring the response to treatment and possible adverse effects; and

(g) creating and maintaining patient records that remain with the physician.

(3) "Telemedicine" has the meaning provided in 33-22-138.

(4) "Treating physician" means an individual who:

(a) is licensed under Title 37, chapter 3; and

(b) has a bona fide professional relationship with the individual applying to be a registered cardholder.

(5) "Written certification" means a statement signed by a treating physician or referral physician that meets the requirements of [section ~~18~~ 13] and is provided in a manner that meets the standard of care.

NEW SECTION. **Section 11. Medical marijuana registry -- department responsibilities -- issuance of cards -- confidentiality.** (1) The department shall establish and maintain a registry of persons who receive registry identification cards under [sections ~~14 through 28~~ 9 through 23].

(2) The department shall issue registry identification cards to Montana residents who have debilitating medical conditions and who submit applications meeting the requirements of [sections ~~14 through 28~~ 9 through 23].

(3) (a) Registry identification cards issued pursuant to [sections ~~14 through 28~~ 9 through 23] must:

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

(ii) state the name, address, and date of birth of the registered cardholder;

(iii) indicate whether the cardholder is obtaining marijuana and marijuana products through the system of licensed cultivators, manufacturers, or dispensaries;

(iv) state the date of issuance and the expiration date of the registry identification card;

(v) contain a unique identification number; and

(vi) contain other information that the department may specify by rule.

(b) Except as provided in subsection (3)(c), in addition to complying with subsection (3)(a), registry identification cards issued pursuant to this part must:

(i) include a picture of the registered cardholder; and

(ii) be capable of being used to track registered cardholder purchases.

(c) (i) The department shall issue a temporary registry identification card on receipt of an application. The cards are valid for 60 days and are exempt from the requirements of subsection (3)(b). Printing of the temporary registry identification cards is exempt from the provisions of Title 18, chapter 7.

(ii) A card may be issued before an applicant's payment of the fee has cleared. The department shall cancel the temporary registry identification card after 60 days and may not issue a permanent registry identification card until the fee is paid.

(4) (a) The department shall review the information contained in an application or renewal submitted pursuant to this part and shall approve or deny an application or renewal within 30 days of receiving the application or renewal and all related application materials.

(b) If the department fails to act on a completed application within 30 days of receipt, the department shall refund the fee paid by an applicant for a registry identification card.

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

(d) The department shall issue a registry identification card within 5 days of approving an application or renewal.

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

(6) Registry identification cards expire 1 year after the date of issuance unless a physician has

provided a written certification stating that a card is valid for a shorter period of time.

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

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

(8) The department shall maintain a confidential list of individuals to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and is not subject to disclosure, except to:

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

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

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

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

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

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

NEW SECTION. **Section 12. Individuals with debilitating medical conditions -- requirements -- minors -- limitations.** (1) Except as provided in subsections (2) through (5), the department shall issue a registry identification card to an individual with a debilitating medical condition who submits the following, in accordance with department rules:

(a) an application on a form prescribed by the department;

(b) an application fee or a renewal fee;

(c) the individual's name, street address, and date of birth;

(d) proof of Montana residency;

(e) a statement, on a form prescribed by the department, that the individual will not divert to any other

individual the marijuana or marijuana products that the individual cultivates, manufactures, or obtains through the system of licensed providers for the individual's debilitating medical condition;

(f) the name of the individual's treating physician or referral physician and the street address and telephone number of the physician's office;

(g) the street address where the individual is cultivating marijuana or manufacturing marijuana products if the individual is cultivating marijuana or manufacturing marijuana products for the individual's own use; and

(h) the written certification and accompanying statements from the individual's treating physician or referral physician as required pursuant to [section ~~18~~ 13].

(2) The department shall issue a registry identification card to a minor if the materials required under subsection (1) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions:

(a) provides proof of legal guardianship and responsibility for health care decisions if the individual is submitting an application as the minor's legal guardian with responsibility for health care decisions; and

(b) signs and submits a written statement that:

(i) the minor's treating physician or referral physician has explained to the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the use of marijuana;

(ii) indicates whether the minor's custodial parent or legal guardian will be obtaining marijuana or marijuana products for the minor through the system of licensed dispensaries provided for in this chapter; and

(iii) the minor's custodial parent or legal guardian with responsibility for health care decisions:

(A) consents to the use of marijuana by the minor;

(B) agrees to control the acquisition of marijuana and the dosage and frequency of the use of marijuana by the minor; and

(C) agrees that the minor will use only marijuana products and will not smoke marijuana;

(c) if the parent or guardian will be serving as the minor's cultivator, undergoes background checks in accordance with subsection (3). The parent or legal guardian shall pay the costs of the background check and may not obtain a license under this chapter if the parent or legal guardian does not meet the requirements set

forth in this chapter.

(d) pledges, on a form prescribed by the department, not to divert to any individual any marijuana purchased for the minor's use in a marijuana product.

(3) A parent serving as a minor's cultivator shall submit fingerprints to facilitate a fingerprint and background check by the department of justice and federal bureau of investigation upon the minor's initial application for a registry identification card and every 3 years after that. The department shall conduct a name-based background check in years when a fingerprint background check is not required.

(4) An application for a registry identification card for a minor must be accompanied by the written certification and accompanying statements required pursuant to [section ~~18~~ 13] from a second physician in addition to the minor's treating physician or referral physician.

(5) An individual may not be a registered cardholder if the individual is in the custody of or under the supervision of the department of corrections or a youth court.

NEW SECTION. **Section 13. Written certification -- accompanying statements.** (1) The written certification provided by a physician must be made on a form prescribed by the department and signed and dated by the physician. The written certification must:

(a) include the physician's name, license number, and office address and telephone number on file with the board of medical examiners and the physician's business e-mail address, if any; and

(b) the name, date of birth, and debilitating medical condition of the patient for whom the physician is providing written certification.

(2) A treating physician or referral physician who is providing written certification for a patient shall provide a statement initialed by the physician that must:

(a) confirm that the physician is:

(i) the patient's treating physician and that the patient has been under the physician's ongoing medical care as part of a bona fide professional relationship with the patient; or

(ii) the patient's referral physician;

(b) confirm that the patient suffers from a debilitating medical condition;

(c) describe the debilitating medical condition, why the condition is debilitating, and the extent to

which it is debilitating;

(d) confirm that the physician has assumed primary responsibility for providing management and routine care of the patient's debilitating medical condition after obtaining a comprehensive medical history and conducting a physical examination, whether in person or, in accordance with subsection (4), through the use of telemedicine, that included a personal review of any medical records maintained by other physicians and that may have included the patient's reaction and response to conventional medical therapies;

(e) describe the medications, procedures, and other medical options used to treat the condition;

(f) state that the medications, procedures, and other medical options have not been effective;

(g) confirm that the physician has reviewed all prescription and nonprescription medications and supplements used by the patient and has considered the potential drug interaction with marijuana;

(h) state that the physician has a reasonable degree of certainty that the patient's debilitating medical condition would be alleviated by the use of marijuana and that, as a result, the patient would be likely to benefit from the use of marijuana;

(i) confirm that the physician has explained the potential risks and benefits of the use of marijuana to the patient;

(j) list restrictions on the patient's activities due to the use of marijuana;

(k) specify the time period for which the use of marijuana would be appropriate, up to a maximum of 1 year;

(l) state that the physician will:

(i) continue to serve as the patient's treating physician or referral physician; and

(ii) monitor the patient's response to the use of marijuana and evaluate the efficacy of the treatment; and

(m) contain an attestation that the information provided in the written certification and accompanying statements is true and correct.

(3) A physician who is the second physician recommending marijuana for use by a minor shall submit:

(a) a statement initialed by the physician that the physician conducted a comprehensive review of the minor's medical records as maintained by the treating physician or referral physician;

(b) a statement that in the physician's professional opinion, the potential benefits of the use of

marijuana would likely outweigh the health risks for the minor; and

(c) an attestation that the information provided in the written certification and accompanying statements is true and correct.

(4) A physician who is providing written certification through the use of telemedicine:

(a) shall comply with the administrative rules adopted for telemedicine by the board of medical examiners provided for in 2-15-1731; and

(b) may not use an audio-only visit unless the physician has first established a physician-patient relationship through an in-person encounter.

(5) If the written certification states that marijuana should be used for less than 1 year, the department shall issue a registry identification card that is valid for the period specified in the written certification.

NEW SECTION. **Section 14. Registry identification card to be exhibited on demand -- photo identification required.** (1) A registered cardholder shall keep the individual's registry identification card in the individual's immediate possession at all times. The registry identification card and a valid photo identification must be displayed upon demand of a law enforcement officer, justice of the peace, or city or municipal judge.

(2) The department shall ensure that law enforcement officers have access to accurate and up-to-date information on persons registered under [sections ~~14 through 28~~ 9 through 23].

(3) Beginning on January 1, 2022, a registered cardholder may request, at their next annual renewal, that the department include on his or her registry identification card the name of up to two individuals who are authorized to acquire and deliver marijuana or marijuana products to the cardholder from a licensed dispensary. Any individual so identified must be at least 21 years of age, possess the registry identification card at all relevant times, and otherwise comply with the daily possession limits set forth in this chapter and rules adopted by the department.

NEW SECTION. **Section 15. Health care facility procedures for patients with marijuana for use.** (1) (a) A health care facility as defined in 50-5-101 shall take the following measures when a patient who is a registered cardholder has marijuana in the patient's possession upon admission to the health care facility:

(i) require the patient to remove the marijuana from the premises before the patient is admitted if the

patient is able to do so; or

(ii) make a reasonable effort to contact the patient's cultivator, manufacturer, or medical marijuana dispensary, court-appointed guardian, or individual with a power of attorney, if any.

(b) If a patient is unable to remove the marijuana or the health care facility is unable to contact an individual as provided in subsection (1)(a), the facility shall contact the local law enforcement agency having jurisdiction in the area where the facility is located.

(2) A cultivator, manufacturer, or medical marijuana dispensary, court-appointed guardian, or individual with a power of attorney, if any, contacted by a health care facility shall remove the marijuana and deliver it to the patient's residence.

(3) A law enforcement agency contacted by a health care facility shall respond by removing and destroying the marijuana.

(4) A health care facility may not be charged for costs related to removal of the marijuana from the facility's premises.

NEW SECTION. **Section 16. Legal protections -- allowable amounts.** (1) (a) A registered cardholder who has elected to obtain marijuana and marijuana products through the system of licensed cultivators, manufacturers, or dispensaries may:

(i) possess up to 1 ounce of usable marijuana; and

(ii) purchase a maximum of 5 ounces of usable marijuana a month and no more than 1 ounce of usable marijuana a day.

(b) (i) A registered cardholder may petition the department for an exception to the monthly limit on purchases. The request must be accompanied by a confirmation from the physician who signed the cardholder's written certification that the cardholder's debilitating medical condition warrants purchase of an amount exceeding the monthly limit.

(ii) If the department approves an exception to the limit, the approval must establish the monthly amount of usable marijuana that the cardholder may purchase and the limit must be entered into the seed-to-sale tracking system.

(2) Except as provided in 16-12-108 and subject to the provisions of subsection (7) of this section, an

individual who possesses a registry identification card issued pursuant to [sections ~~14 through 28~~ 9 through 23] may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

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

(b) the registered cardholder acquires or uses marijuana.

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

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

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

(b) a physician violates the standard of care or other requirements of [sections ~~14 through 28~~ 9 through 23].

(5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity of the use of marijuana and marijuana products as permitted under [sections ~~14 through 28~~ 9 through 23].

(b) This subsection (5) does not prevent the arrest or prosecution of an individual who is in the vicinity of a registered cardholder's use of marijuana if the individual is in possession of or is using marijuana in excess of the amounts otherwise provided in this chapter and is not a registered cardholder.

(6) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or individual or the property of the person or individual or otherwise subject the person or individual or property of the person or individual possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

(7) The provisions of this section relating to protection from arrest or prosecution do not apply to an individual unless the individual has obtained a registry identification card prior to an arrest or the filing of a

criminal charge. It is not a defense to a criminal charge that an individual obtains a registry identification card after an arrest or the filing of a criminal charge.

(8) (a) A registered cardholder is presumed to be engaged in the use of marijuana as allowed by [sections ~~14 through 28~~ 9 through 23] if the person:

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

(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under [sections ~~14 through 28~~ 9 through 23].

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a registered cardholder's debilitating medical condition and exceeded the allowable amount of marijuana otherwise provided for in [sections ~~14 through 28~~ 9 through 23].

NEW SECTION. **Section 17. Prohibitions on physician affiliation with licensees -- sanctions.** (1) (a) A physician who provides written certifications may not:

(i) accept or solicit anything of value, including monetary remuneration, from a person licensed under this chapter;

(ii) offer a discount or any other thing of value to a patient who uses or agrees to use a person licensed under this chapter; or

(iii) examine a patient for the purposes of diagnosing a debilitating medical condition at a licensed premises or a testing laboratory.

(b) Subsection (1)(a) does not prevent a physician from accepting a fee for providing medical care to a person licensed under this chapter if the physician charges the individual the same fee that the physician charges other patients for providing a similar level of medical care.

(2) A person licensed under this chapter may not:

(a) arrange for a physician to conduct a physical examination or review of medical records required under [sections ~~14 through 28~~ 9 through 23], either in the physician's office or at another location; or

(b) pay all or a portion of the costs for an individual to be seen by a physician for the purposes of obtaining a written certification.

(3) If the department has cause to believe that a physician has violated this section, has violated a

provision of rules adopted pursuant to [sections ~~14 through 28~~ 9 through 23], or has not met the standard of care required under [sections ~~14 through 28~~ 9 through 23], the department may refer the matter to the board of medical examiners provided for in 2-15-1731 for review pursuant to 37-1-308.

(4) A violation of this section constitutes unprofessional conduct under 37-1-316. If the board of medical examiners finds that a physician has violated this section, the board shall restrict the physician's authority to provide written certification for the use of marijuana. The board of medical examiners shall notify the department of the sanction.

(5) If the board of medical examiners believes a physician's practices may harm the public health, safety, or welfare, the board may summarily restrict a physician's authority to provide written certification for the use of marijuana for a debilitating medical condition.

(6) (a) If the department has reason to believe a person licensed under this chapter has violated this section, the department shall refer the matter to the law enforcement entity and county attorney having jurisdiction where the person licensed under this chapter is doing business.

(b) If a person licensed under this chapter is found to have violated the provisions of this section, the department shall revoke the person's license. A person whose license has been revoked for a violation of this section is prohibited from reapplying for licensure under this chapter.

(7) (a) A law enforcement entity or county attorney who investigates a suspected violation of this section shall report the results of the investigation to the department.

(b) The department may receive the results of this investigation even if the information constitutes confidential criminal justice information as defined in 44-5-103.

NEW SECTION. **Section 18. Unlawful conduct by cardholders -- penalties.** (1) The department shall revoke and may not reissue the registry identification card of an individual who:

(a) is convicted of a drug offense; or

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

(i) registry identification card, except as provided for in [section ~~19~~ 14]; or

(ii) mature marijuana plants, seedlings, usable marijuana, or marijuana products.

(2) If no other penalty is specified under [sections ~~14 through 28~~ 9 through 23], a registered

cardholder who violates [sections ~~14 through 28~~ 9 through 23] is punishable by a fine not to exceed $500 or by imprisonment in a county jail for a term not to exceed 6 months, or both, unless otherwise provided in [sections ~~14 through 28~~ 9 through 23] or unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of Title 45.

(3) Review of a department action imposing a fine, suspension, or revocation under this section must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

NEW SECTION. **Section 19. Fraudulent representation -- penalties.** (1) In addition to any other penalties provided by law, an individual who fraudulently represents to a law enforcement official that the individual is a registered cardholder is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed $1,000, or both.

(2) A physician who purposely and knowingly misrepresents any information required under [section ~~18~~ 13] is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed $1,000, or both.

NEW SECTION. **Section 20. Confidentiality of registry information -- penalty.** (1) Except as provided in 37-3-203, a person, including an employee or official of the department, commits the offense of disclosure of confidential information related to registry information if the person knowingly or purposely discloses confidential information in violation of [sections ~~14 through 28~~ 9 through 23].

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

NEW SECTION. **Section 21. Law enforcement authority.** Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to an individual with a registry identification card.

NEW SECTION. **Section 22. Legislative monitoring.** (1) The economic affairs interim committee shall provide oversight of the department's activities pursuant to [sections ~~14 through 28~~ 9 through 23],

including but not limited to monitoring of:

(a) the number of registered cardholders; and

(b) the number and type of violations committed by registered cardholders, together with the penalties imposed upon registered cardholders by the department.

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

(3) (a) The department shall periodically report to the economic affairs interim committee and submit a report to the legislative clearinghouse, as provided in 5-11-210, on persons who are registered pursuant to [sections ~~14 through 28~~ 9 through 23]. The report must include:

(i) the number of applications for registry identification cards and the number of registered cardholders approved;

(ii) the nature of the debilitating medical conditions of the cardholders;

(iii) the number of registry identification cards and licenses revoked; and

(iv) the number of physicians providing written certification for registered cardholders and the number of written certifications each physician has provided.

(b) The report may not provide any identifying information of cardholders or physicians.

(4) The board of medical examiners shall report annually to the economic affairs interim committee on the number and types of complaints the board has received involving physician practices in providing written certification for the use of marijuana, pursuant to 37-3-203.

(5) The reports provided for in subsections (3) and (4) must also be provided to the revenue interim committee provided for in 5-5-227.

NEW SECTION. **Section 23. Rulemaking authority -- fees.** The department may adopt rules to implement [sections ~~14 through 28~~ 9 through 23] as authorized in this section to specify:

(1) the manner in which the department will consider applications for registry identification cards for individuals with debilitating medical conditions and renewal of registry identification cards;

(2) the acceptable forms of proof of Montana residency;

(3) notice and contested case hearing procedures for fines or registry identification card revocation,

suspension, or modification;

(4) the procedures for obtaining fingerprints for the fingerprint and background check required under [section ~~17~~ 12];

(5) the amount of usable marijuana that a registered cardholder who has elected not to use the system of licensees provided for under this chapter may possess; and

(6) the fees for cardholders. The annual cardholder license fee may not be less than $20.

Section 24. Section 5-5-227, MCA, is amended to read:

"**5-5-227. Revenue interim committee -- powers and duties -- revenue estimating and use of estimates.** (1) The revenue interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the state tax appeal board established in 2-15-1015 and for the department of revenue and the entities attached to the department for administrative purposes, except the ~~division~~ divisions of the department that ~~administers~~ administer the Montana Alcoholic Beverage Code and the Montana Marijuana Regulation and Taxation Act.

(2) (a) The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) The committee may prepare for introduction during a special session of the legislature in which a revenue bill or an appropriation bill is under consideration an estimate of the amount of projected revenue. The revenue estimate is considered a subject specified in the call of a special session under 5-3-101.

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

(4) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.

(5) The committee shall review tax credits [scheduled to expire] as provided in 15-30-2303."

Section 25. Section 7-22-2101, MCA, is amended to read:

"**7-22-2101. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Board" means a district weed board created under 7-22-2103.

(2) "Commissioners" means the board of county commissioners.

(3) "Coordinator" means the person employed by the county to conduct the district noxious weed management program and supervise other district employees.

(4) "Department" means the department of agriculture provided for in 2-15-3001.

(5) "District" means a weed management district organized under 7-22-2102.

(6) "Integrated weed management program" means a program designed for the long-term management and control of weeds using a combination of techniques, including hand-pulling, cultivation, use of herbicide, use of biological control, mechanical treatment, prescribed grazing, prescribed burning, education, prevention, and revegetation.

(7) "Native plant" means a plant indigenous to the state of Montana.

(8) "Native plant community" means an assemblage of native plants occurring in a natural habitat.

(9) (a) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(i) as a statewide noxious weed by rule of the department; or

(ii) as a district noxious weed by a board, following public notice of intent and a public hearing.

(b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.

<u>(c) Marijuana, as defined in 16-12-102, may not be considered a noxious weed.</u>

(10) "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or

right-of-way for a canal or lateral.

(11) "Weed management" or "control" means the use of an integrated weed management program for the containment, suppression, and, where possible, eradication of noxious weeds."

Section 26. Section 15-64-101, MCA, is amended to read:

"**15-64-101. Definitions.** As used in this part, the following definitions apply:

(1) "Adult-use dispensary" has the meaning provided in 16-12-102.

~~(1)~~(2) "Department" means the department of revenue provided for in 2-15-1301.

(3) "Marijuana" has the meaning provided in 16-12-102.

~~(2)~~(4) "Marijuana product" ~~means marijuana as defined in 50-32-101 and marijuana-infused products as defined in 50-46-302~~ has the meaning provided in 16-12-102.

~~(3) "Marijuana product provider" means provider or a marijuana-infused products provider as those terms are defined in 50-46-302.~~

(5) "Medical marijuana dispensary" has the meaning provided in 16-12-102.

~~(4)~~(6) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group of persons, or other business entity, however formed.

~~(5)~~(7) "Purchaser" means a person to whom a sale of marijuana or a marijuana product is made.

~~(6)~~(8) "Retail price" means the established price for which ~~a marijuana product provider~~ an adult-use dispensary or medical marijuana dispensary sells marijuana or a marijuana product to a purchaser before any discount or reduction.

~~(7)~~(9) "Sale" or "sell" means any transfer of marijuana or marijuana products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means."

Section 27. Section 15-64-102, MCA, is amended to read:

"**15-64-102. Tax on marijuana ~~product providers~~ sales.** (1) (a) ~~There~~ For a medical marijuana dispensary, there is a tax equal to the percentage provided in subsection (1)(b) on a ~~marijuana product provider's~~ medical marijuana dispensary's gross sales of marijuana, marijuana products, and live marijuana plants for use by individuals with debilitating medical conditions that is payable four times a year.

(b) The percentage of tax on gross sales in subsection (1)(a) is ~~as follows:~~ 4%.

~~(i) for gross sales during the calendar quarters beginning October 1, 2019, and ending September 30, 2021, the amount is 4%; and~~

~~(ii) for gross sales during the calendar quarters beginning October 1, 2021, and thereafter, the amount is 2%.~~

(2) (a) For an adult use-dispensary, there is tax equal to the percentage provided in subsection (2)(b) on the purchase of marijuana and marijuana products.

(b) The tax under this subsection (2) is imposed at a rate of 20% of the retail price.

(3) The taxes set forth in subsections (1) and (2) are imposed on the purchaser and must be collected at the time of the sale and paid by the seller to the department for deposit in the marijuana state special revenue account provided for in 16-12-111.

~~(2)~~(4) A ~~marijuana product provider~~ dispensary licensed under Title 16, chapter 12, shall submit a quarterly report to the department listing the total dollar amount of sales ~~from any registered premises, as defined in 50-46-302, operated by the marijuana product provider, including dispensaries~~. The report must be:

(a) made on forms prescribed by the department; and

(b) submitted within 15 days of the end of each calendar quarter.

~~(3)~~(5) At the time the report is filed, the ~~marijuana product provider~~ dispensary shall submit a payment equal to the percentage provided in subsection (1)(b) or (2)(b) of the total dollar amount of sales.

~~(4)~~(6) The department shall deposit the taxes paid under this section in the ~~medical marijuana~~ state special revenue account provided for in ~~50-46-345~~ 16-12-111 within the state special revenue fund established in 17-2-102.

~~(5)~~(7) The tax imposed by this part and related interest and penalties are a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

~~(6)~~(8) For the purpose of determining liability for the filing of statements and the payment of taxes, penalties, and interest owed under 15-64-103 through 15-64-106:

(a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state taxes provided for in 15-64-103 through 15-64-106 and who fails to pay the taxes is liable to the state for the

taxes and the penalty and interest due on the amounts;

(b) each officer of the corporation, to the extent that the officer has access to the requisite records, is individually liable along with the corporation for filing statements and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements required by this part or pay taxes due as required by this part;

(c) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(d) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(e) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(f) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

~~(7)~~(9) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection ~~(6)(a)~~ (8)(a) to establish individual liability and may consider any other available information.

~~(8)~~(10) In the case of a bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the entity.

(11) The tax levied pursuant to this section is separate from and in addition to any general state and local sales and use taxes that apply to retail sales, which must continue to be collected and distributed as provided by law.

(12) The tax levied under this section must be used as designated in 16-12-111."

Section 28. Section 15-64-103, MCA, is amended to read:

"**15-64-103. Returns -- payment -- recordkeeping -- authority of department.** (1) Each ~~marijuana product provider~~ marijuana dispensary licensed under Title 16, chapter 12, shall file a return, on a form provided by the department, and pay the tax due as provided in 15-64-102.

(2) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(3) (a) A person required to pay to the department the taxes imposed by this part shall keep for 5 years:

(i) all receipts issued; and

(ii) an accurate record of all sales of marijuana and marijuana products, ~~showing the name and address of each purchaser,~~ the date of sale, and the quantity, kind, and retail price of each product sold.

(b) For the purpose of determining compliance with the provisions of this part, the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

(i) require the attendance of a person having knowledge or information relevant to a return;

(ii) compel the production of books, papers, records, or memoranda by the person required to attend;

(iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;

(iv) take testimony on matters material to the determination; and

(v) administer oaths or affirmations.

(4) Pursuant to rules established by the department, returns may be computer-generated and electronically filed."

Section 29. Section 15-64-104, MCA, is amended to read:

"**15-64-104. Deficiency assessment -- penalty and interest -- statute of limitations.** (1) If the department determines that the amount of the tax due is greater than the amount disclosed by a return, it shall mail to the ~~marijuana product provider~~ licensee a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The ~~marijuana product provider~~ licensee may seek review of the determination pursuant to 15-1-211.

(2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) The amount of tax due under any return may be determined by the department within 5 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For purposes of this section, a return due under this part and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing."

Section 30. Section 15-64-105, MCA, is amended to read:

"**15-64-105. Procedure to compute tax in absence of statement -- estimation of tax -- failure to file -- penalty and interest.** (1) If the ~~marijuana product provider~~ licensee operating a marijuana dispensary fails to file any return required by 15-64-103 within the time required, the department may, at any time, audit the ~~marijuana product provider~~ licensee or estimate the taxes due from any information in its possession and, based on the audit or estimate, assess the ~~marijuana product provider~~ licensee for the taxes, penalties, and interest due the state.

(2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail to the ~~marijuana product provider~~ licensee a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The ~~marijuana product provider~~ licensee may seek review of the determination pursuant to 15-1-211. The department may waive any penalty pursuant to 15-1-206."

Section 31. Section 15-64-106, MCA, is amended to read:

"**15-64-106. Authority to collect delinquent taxes.** (1) (a) The department shall collect taxes that are delinquent as determined under this part.

(b) If a tax imposed by this part or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the ~~marijuana product provider~~ licensee from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the ~~marijuana product provider~~ licensee has the right to a review of the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the ~~marijuana product provider~~ licensee if a claim is required before funds are available for offset."

Section 32. Section 15-64-111, MCA, is amended to read:

"**15-64-111. Information -- confidentiality -- agreements with another state.** (1) (a) Except as provided in subsections (2) through (5), in accordance with 15-30-2618 and 15-31-511, it is unlawful for an employee of the department or any other public official or public employee to disclose or otherwise make known information that is disclosed in a return or report required to be filed under this part or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are classified in a way that does not disclose the identity of a person making a return or the content of any particular report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-2618 or 15-31-511 for violating the confidentiality of individual income tax or corporate income tax information.

(2) (a) This section may not be construed to prohibit the department from providing information obtained under this part to~~:~~

~~(i)~~ the department of justice, the internal revenue service, or law enforcement to be used for the purpose of investigation and prevention of criminal activity, noncompliance, tax evasion, fraud, and abuse under this part~~; or~~

~~(ii) the department of public health and human services to be used for the purpose of investigation and~~

~~prevention of noncompliance, fraud, and abuse under the Montana Medical Marijuana Act~~.

(b) The department may enter into an agreement with the taxing officials of another state for the interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax in order to promote fair and equitable administration of the laws and to eliminate double taxation.

(c) In order to implement the provisions of this part, the department may furnish information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by this part, the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

(4) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this part or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this part or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(5) This section may not be construed to limit the investigative authority of the legislative branch, as provided in 5-11-106, 5-12-303, or 5-13-309."

Section 33. Section 15-64-112, MCA, is amended to read:

"**15-64-112. Department to make rules.** The department of revenue shall prescribe rules necessary to carry out the purposes of imposing and collecting the marijuana tax on gross sales on ~~marijuana product providers~~ medical marijuana dispensaries and retail sales occurring at adult-use dispensaries."

Section 34. Section 16-12-101, MCA, is amended to read:

"**16-12-101. (Effective ~~October 1, 2021~~ January 1, 2022) Short title -- purpose.** (1) This chapter

may be cited as the "Montana Marijuana Regulation and Taxation Act".

(2) The purpose of this chapter is to:

(a) provide for legal possession and use of limited amounts of marijuana legal for adults 21 years of age or older;

(b) provide for the licensure and regulation of the ~~commercial~~ cultivation, manufacture, production, distribution, transportation, and sale of marijuana and ~~marijuana-infused~~ marijuana products;

~~(c) allow for limited cultivation, manufacture, delivery, and possession of marijuana as permitted by this chapter;~~

~~(d)~~(c) eliminate the illicit market for marijuana and ~~marijuana-infused~~ marijuana products;

~~(e)~~(d) prevent the distribution of marijuana sold under this chapter to persons under 21 years of age;

~~(f)~~(e) ensure the safety of marijuana and ~~marijuana-infused~~ marijuana products;

~~(g)~~(f) ensure the security of ~~registered~~ licensed premises ~~and adult-use dispensaries~~;

~~(h)~~(g) establish reporting requirements for ~~adult-use providers and adult-use marijuana-infused products providers~~ licensees;

~~(i)~~(h) establish inspection requirements for ~~registered premises~~ licensees, including data collection on energy use, chemical use, water use, and packaging waste to ensure a clean and healthy environment;

~~(j)~~(i) provide for the testing of marijuana and marijuana products by licensed testing laboratories;

~~(k)~~(j) give local governments ~~a role in establishing standards for~~ authority to allow for the operation of marijuana businesses in their community and establishing standards for the cultivation, manufacture, and sale of marijuana that protect the public health, safety, and welfare of residents within their jurisdictions;

~~(l)~~(k) tax the sale of marijuana and ~~marijuana-infused~~ marijuana products to ~~generate revenue for the state and~~ provide compensation for the economic and social costs of ~~past and current~~ marijuana ~~cultivation, processing, and use, by directing funding to:~~

~~(i) conservation programs to offset the use of water and soil in marijuana cultivation;~~

~~(ii) substance abuse treatment and prevention programs;~~

~~(iii) veterans' services and support;~~

~~(iv) health care;~~

~~(v) localities where marijuana is sold; and~~

~~(vi) the state general fund~~;

~~(m)~~(l) authorize courts to resentence persons who are currently serving sentences for acts that are permitted under this chapter or for which the penalty is reduced by this chapter and to redesignate or expunge those offenses from the criminal records of persons who have completed their sentences as set forth in this chapter; and

(m) preserve and protect Montana's well-established hemp industry by drawing a clear distinction between those participants and programs and the participants and programs associated with the marijuana industry."

Section 35. Section 16-12-102, MCA, is amended to read:

"**16-12-102. (Effective ~~October 1, 2021~~ January 1, 2022) Definitions.** As used in this chapter, the following definitions apply:

(1) "Adult-use dispensary" means a ~~registered~~ licensed premises from which a ~~licensed adult-use provider or adult-use marijuana-infused products provider is approved by the department to dispense marijuana or marijuana-infused products to a consumer~~ person licensed by the department may:

(a) obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or other licensee approved under this chapter; and

(b) sell marijuana or marijuana products to registered cardholders, adults that are 21 years of age or older, or both.

~~(2) "Adult-use marijuana-infused products provider" means a person licensed by the department to manufacture and provide marijuana-infused products for consumers as allowed by this chapter.~~

~~(3) "Adult-use provider" means a person licensed by the department to cultivate and process marijuana for consumers as allowed by this chapter.~~

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person.

(3) "Beneficial owner of", "beneficial ownership of", or "beneficially owns an" is determined in accordance with section 13(d) of the federal Securities and Exchange Act of 1934, as amended.

(4) "Canopy" means the total amount of square footage dedicated to live plant production at a

~~registered~~ licensed premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

(5) "Consumer" means a person 21 years of age or older who obtains or possesses marijuana or ~~marijuana-infused~~ marijuana products for personal use from a licensed dispensary ~~or for use by persons who are at least 21 years of age,~~ but not for resale.

(6) "Control", "controls", "controlled", "controlling", "controlled by", and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting owner's interests, by contract, or otherwise.

(7) "Controlling beneficial owner" means a person that satisfies one or more of the following:

(a) is a natural person, an entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, a publicly traded corporation, and:

(i) acting alone or acting in concert, owns or acquires beneficial ownership of 5% or more of the owner's interest of a marijuana business;

(ii) is an affiliate that controls a marijuana business and includes, without limitation, any manager; or

(iii) is otherwise in a position to control the marijuana business; or

(b) is a qualified institutional investor acting alone or acting in concert that owns or acquires beneficial ownership of more than 15% of the owner's interest of a marijuana business.

~~(6)~~(8) "Correctional facility or program" means a facility or program that is described in 53-1-202 and to which an individual may be ordered by any court of competent jurisdiction.

(9) "Cultivator" means a person licensed by the department to:

(a) plant, cultivate, grow, harvest, and dry marijuana; and

(b) package and relabel marijuana produced at the location in a natural or naturally dried form that has not been converted, concentrated, or compounded for sale through a licensed dispensary.

(10) "Debilitating medical condition" means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is a persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) posttraumatic stress disorder.

~~(7)~~(11) "Department" means the department of revenue provided for in 2-15-1301.

~~(8)~~(12) (a) "Employee" means an individual employed to do something for the benefit of an employer.

(b) The term includes a manager, agent, or director of a partnership, association, company, corporation, limited liability company, or organization.

(c) The term does not include a third party with whom a licensee has a contractual relationship.

~~(9)~~(13) (a) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly through a business, an investment, or a spouse, parent, or child relationship, to ~~1%~~ 5% or more of the net profits or net worth of the entity in which the interest is held.

(b) The term does not include interest held by a bank or licensed lending institution or a security interest, lien, or encumbrance but does include holders of private loans or convertible securities.

(14) "Former medical marijuana licensee" means a person that was licensed by the department of public health and human services to provide marijuana to individuals with debilitating medical conditions on November 3, 2020.

(15) (a) "Indoor cultivation facility" means the location where a person cultivates live marijuana plants inside a physical structure that is not exposed to natural sunlight and environmental conditions including, variable temperatures, precipitation, and wind.

(b) The term may include:

(i) a greenhouse; and

(ii) a hoop house.

(16) "Licensed premises" means all locations related to, or associated with, a specific license that is authorized under this chapter and includes all enclosed public and private areas at the location that are used in the business operated pursuant to a license, including offices, kitchens, restrooms, and storerooms.

~~(10)~~(17) "Licensee" means a person holding a state license issued pursuant to this chapter.

~~(11)~~(18) "Local government" means a county, a consolidated government, or an incorporated city or town.

~~(12) "Manufacturing" means the production of marijuana concentrate.~~

(19) "Manufacturer" means a person licensed by the department to convert or compound marijuana into marijuana products, marijuana concentrates, or marijuana extracts and package, repackage, label, or relabel marijuana products as allowed under this chapter.

~~(13)~~(20) (a) "Marijuana" means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(b) The term does not include hemp, including any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis, or commodities or products manufactured with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

(c) The term does not include a drug approved by the United States food and drug administration pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(21) "Marijuana business" means a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other business or function that is licensed by the department under this chapter.

~~(14)~~(22) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.

~~(15)~~(23) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, or

byproducts of the marijuana plant, including but not limited to marijuana concentrates and ~~marijuana-infused~~ other marijuana products.

~~(16)~~(24) "~~Marijuana-infused~~ Marijuana product" means a product that contains marijuana and is intended for use by a consumer by a means other than smoking. The term includes but is not limited to edible products, ointments, ~~and~~ tinctures, marijuana derivatives, and marijuana concentrates.

(25) "Marijuana transporter" means a person that is licensed to transport marijuana and marijuana products from one marijuana business to another marijuana business, or to and from a testing laboratory, and to temporarily store the transported retail marijuana and retail marijuana products at its licensed premises, but is not authorized to sell marijuana or marijuana products to consumers under any circumstances.

~~(17)~~(26) "Mature marijuana plant" means a harvestable ~~female~~ marijuana plant ~~that is flowering~~.

(27) "Medical marijuana" means marijuana or marijuana products that are for sale solely to a cardholder who is registered under [sections ~~14 through 28~~ 9 through 23].

(28) "Medical marijuana dispensary" means the location from which a registered cardholder may obtain marijuana or marijuana products.

~~(18) "Owner" means a principal officer, director, board member, or individual who has a financial interest or voting interest of 10% or greater in an adult-use dispensary, adult-use provider, or adult-use marijuana-infused products provider.~~

(29) "Owner's interest" means the shares of stock in a corporation, a membership in a nonprofit corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a partnership, and the interest of a member in a limited partnership association.

~~(19)~~(30) "Paraphernalia" has the meaning provided for "drug paraphernalia" in 45-10-101.

(31) "Passive beneficial owner" means any person acquiring an owner's interest in a marijuana business that is not otherwise a controlling beneficial owner or in control.

~~(20)~~(32) "Person" means an individual, partnership, association, company, corporation, limited liability company, or organization.

~~(21) "Registered premises" means a location that is licensed pursuant to this chapter and includes:~~

~~(a) all enclosed public and private areas at the location that are used in the business operated~~

~~pursuant to a license, including offices, kitchens, restrooms, and storerooms; and~~

~~(b) if the department has specifically licensed a location for outdoor cultivation, production, manufacturing, wholesale sale, or retail sale of adult-use marijuana and adult-use marijuana-infused products, the entire unit of land that is created by subsection or partition of land that the licensee owns, leases, or has the right to occupy.~~

(33) "Qualified institutional investor" means:

(a) a bank or banking institution including any bank, trust company, member bank of the federal reserve system, bank and trust company, stock savings bank, or mutual savings bank that is organized and doing business under the laws of this state, any other state, or the laws of the United States;

(b) a bank holding company as defined in 32-1-109;

(c) a company organized as an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and that is subject to regulation or oversight by the insurance department of the office of the state auditor or a similar agency of another state, or any receiver or similar official or any liquidating agent for such a company, in their capacity as such.an insurance company;

(d) an investment company registered under section 8 of the federal Investment Company Act of 1940, as amended;

(e) an employee benefit plan or pension fund subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a licensee or an intermediary holding company licensee that directly or indirectly owns 10% or more of a licensee;

(f) a state or federal government pension plan; or

(g) any other entity identified by rule by the department.

(34) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(35) "Registry identification card" means a document issued by the department pursuant to [section ~~16~~ 11] that identifies an individual as a registered cardholder.

~~(22)~~(36) (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of this chapter if the individual:

(i) claims residence in another state or country for any purpose; or

(ii) is an absentee property owner paying property tax on property in Montana.

~~(23)~~(37) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

~~(24)~~(38) "State laboratory" means the laboratory operated by the department of public health and human services to conduct environmental analyses.

~~(25)~~(39) "Testing laboratory" ~~has the meaning as provided in 50-46-302~~ means a qualified person, licensed under this chapter that:

(a) provides testing of representative samples of marijuana and marijuana products; and

(b) provides information regarding the chemical composition and potency of a sample, as well as the presence of molds, pesticides, or other contaminants in a sample.

~~(26) "Unduly burdensome" means requiring such a high investment of money, time, or any other resource or asset to achieve compliance that a reasonably prudent businessperson would not operate.~~

(40) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant that are appropriate for the use of marijuana by an individual.

(b) The term does not include the seeds, stalks, and roots of the plant."

Section 36. Section 16-12-104, MCA, is amended to read:

"**16-12-104. (Effective ~~October 1, 2021~~ January 1, 2022) Department responsibilities -- licensure.** (1) The department shall establish and maintain a registry of persons who receive licenses under this chapter.

(2) (a) The department shall issue the following license types to persons who submit applications meeting the requirements of this chapter:

~~(a) licenses:~~

~~(i) to persons who apply to operate as adult-use providers or adult-use marijuana-infused products providers and who submit applications meeting the requirements of this chapter; and~~

~~(ii) for adult-use dispensaries established by adult-use providers or adult-use marijuana-infused products providers; and~~

~~(b) endorsements for manufacturing to an adult-use provider or an adult-use marijuana-infused products provider that applies for a manufacturing endorsement and meets requirements established by the department by rule.~~

(i) cultivator license;

(ii) manufacturer license;

(iii) adult-use dispensary license or a medical marijuana dispensary license;

(iv) testing laboratory license.

(v) marijuana transporter license.

(vi) combined-use marijuana license.

(b) The department may establish other license types, sub-types, endorsements, and restrictions it considers necessary for the efficient administration of this chapter.

~~(2) A person who obtains an adult-use provider license, adult-use marijuana-infused products provider license, or adult-use dispensary license or an employee of a licensed adult-use provider or adult-use marijuana-infused products provider is authorized to cultivate, manufacture, possess, sell, and transport marijuana as allowed by this chapter.~~

~~(3) A person who obtains a testing laboratory license or an employee of a licensed testing laboratory is authorized to possess, test, and transport marijuana as allowed by this chapter.~~

~~(4) The department shall conduct criminal history background checks as required by 50-46-307 and 50-46-308 before issuing a license to a person named as a provider or marijuana-infused products provider.~~

~~(5) Licenses issued pursuant to this chapter must:~~

~~(a) be laminated and produced on a material capable of lasting for the duration of the time period for which the license is valid;~~

~~(b) indicate whether an adult-use provider or an adult-use marijuana-infused products provider has an endorsement for manufacturing;~~

~~(c) state the date of issuance and the expiration date of the license; and~~

~~(d) contain other information that the department may specify by rule.~~

~~(6) (a) The department shall make application forms available and begin accepting applications for licensure and endorsement under this chapter on or before January 1, 2022.~~

(3) A licensee may not cultivate hemp or engage in hemp manufacturing at a licensed premises.

(4) A person licensed to cultivate or manufacture marijuana or marijuana products is subject to the provisions contained in the Montana Pesticides Act provided for in Title 80, chapter 8.

(5) The department shall assess applications for licensure or renewal to determine if an applicant, controlling beneficial owner, or a person with a financial interest in the applicant meets any of the criteria established in this chapter for denial of a license.

(6) A license issued pursuant to this chapter must be displayed by the licensee as provided for in rule by the department.

~~(b)~~(7) (a) The department shall review the information contained in an application or renewal submitted pursuant to this chapter and shall approve or deny an application:

(i) within ~~30~~ 60 days of receiving the application or renewal and all related application materials from a former medical marijuana licensee or an existing ~~licensed provider or marijuana-infused products provider~~ licensee under this chapter; and

(ii) within ~~90~~ 120 days of receiving the application and all related application materials from a new applicant.

~~(c)~~(b) If the department fails to act on a completed application within the time allowed under subsection ~~(6)(b)~~ (7)(a), the department shall:

(i) reduce the cost of the licensing fee for a new applicant for licensure or endorsement or for a licensee seeking renewal of a license by 5% each week that the application is pending; and

(ii) allow a licensee to continue operation until the department takes final action.

~~(d) Applications that are not processed within the time allowed under subsection (6)(b) remain active until the department takes final action.~~

~~(e)~~(c) ~~(i)~~ The department may not take final action on an application for a license or renewal of a license until the department has completed a satisfactory inspection as required by this chapter and related administrative rules.

~~(ii) Failure by the department to complete the required inspection within the time allowed under subsection (6)(b) does not prevent an application from being considered complete for the purpose of subsection (6)(c).~~

~~(f)~~(d) The department shall issue a license or endorsement within 5 days of approving an application or renewal.

~~(7)~~(8) Review of a rejection of an application or renewal may be conducted as a contested case hearing before the department's office of dispute resolution pursuant to the provisions of the Montana Administrative Procedure Act.

(a) A person may appeal any decision of the department of revenue concerning the issuance, rejection, suspension, or revocation of a license provided for by this chapter to the district court of the first judicial district.

(b) An appeal pursuant to subsection (8)(a) must be made by filing a complaint setting forth the grounds for relief and the nature of relief demanded with the district court within 30 days following receipt of notice of the department's final decision.

~~(8)~~(9) Licenses ~~and endorsements~~ issued ~~to adult-use providers and adult-use marijuana-infused products providers~~ under this chapter must be renewed annually.

~~(9)~~(10) ~~—~~ (a) The department shall provide the names and phone numbers of ~~adult-use providers and adult-use marijuana-infused products providers~~ persons licensed under this chapter and the city, town, or county where ~~registered~~ licensed premises ~~and testing laboratories~~ are located to the public on the department's website. ~~The~~ Except as provided in subsection (10)(b), the department may not disclose the physical location or address of ~~an adult-use provider, adult-use marijuana-infused products provider, adult-use dispensary, or testing laboratory~~ a marijuana business.

(b) The department may share the physical location or address of a marijuana business with another state agency, political subdivision, and the state fire marshal.

~~(10)~~(11) The department may not prohibit ~~an adult-use provider, adult-use marijuana-infused products provider,~~ a cultivator, manufacturer, or adult-use dispensary licensee operating in compliance with the requirements of this chapter from operating at a shared location with a ~~provider, marijuana-infused products provider, or dispensary as defined in50-46-302if the provider, marijuana-infused products provider, or dispensary is owned by the same person~~ medical marijuana dispensary.

~~(11)~~(12) The department may not adopt rules requiring a consumer to provide ~~an adult-use provider, adult-use marijuana-infused products provider, or adult-use dispensary~~ a licensee with identifying information

other than government-issued identification to determine the consumer's age ~~or require the recording of personal information about consumers other than information typically required in a retail transaction~~. A licensee that scans a person's driver's license using an electronic reader to determine the person's age:

(a) may only use data or metadata from the scan determine the person's age;

(b) may not transfer or sell that data or metadata to another party; and

(c) shall permanently delete any data or metadata from the scan within 180 days, unless otherwise provided for in this chapter or by the department.

(13) (a) Except as provided in subsection (13)(b), licenses issued by the department under this chapter are nontransferable.

(b) A licensee may sell its marijuana business, including live plants, inventory, and material assets to a person who is licensed by the department under the provisions of this chapter. The department may, in its discretion, issue a temporary license to the acquiring party to facilitate the transfer of the licensee's marijuana business.

(14) A person who is not a controlling beneficial owner in a licensee may not receive or otherwise obtain an ownership interest in a licensee that results in the person becoming a controlling beneficial owner unless the licensee notifies, in writing, the department of the proposed transaction, and the department determines that the person qualifies for ownership under the provisions of this chapter."

Section 37. Section 16-12-105, MCA, is amended to read:

"**16-12-105. (Effective ~~October 1, 2021~~ January 1, 2022) Department responsibility to monitor and assess marijuana production, testing, sales, and license revocation.** (1) (a) The department shall implement a system for tracking marijuana~~, marijuana concentrate, and marijuana-infused~~ and marijuana products from either the seed or the seedling stage until ~~the marijuana, marijuana concentrate, or marijuana-infused product~~ it is sold to a consumer or registered cardholder.

(b) The system must~~:~~

~~(i)~~ ensure that ~~the~~ marijuana~~, marijuana concentrate, or marijuana-infused product~~ and marijuana products cultivated, manufactured, possessed, and sold under this chapter ~~is~~ are not sold or otherwise provided to an individual who is under 21 years of age ~~and who is not a medical marijuana~~ unless that person is a

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registered cardholder; and

~~(ii)~~(c) The system must be made available to ~~adult-use providers, adult-use marijuana-infused products providers, adult-use dispensaries, and testing laboratories at no additional cost~~ licensees, except that licensees shall bear the responsibility and cost for procuring unique identification tracking tags to facilitate the tracking of marijuana and marijuana products.

(2) The department shall investigate and assess the utilization of a mandatory cashless payment system occurring at the point of sale for all dispensaries. Adult-use dispensaries and medical marijuana dispensaries are encouraged to utilize a cashless point of sale system when selling marijuana and marijuana products to consumers or registered cardholders. The department may establish by rule the minimum requirements and standards that a licensee must satisfy when utilizing such a system in a dispensary.

(3) At the request of a licensee, the department is authorized to share seed-to-sale information with the licensee's depository institution.

~~(b) The department may implement the same system that is used to track marijuana, marijuana concentrate, and marijuana-infused products pursuant to 50-46-304.~~

~~(2) The department shall assess applications for an adult-use provider or adult-use marijuana-infused products provider license to determine if a person with a financial interest in the applicant meets any of the criteria established in 16-12-203 for denial of a license.~~

~~(3) Before issuing or renewing a license, the department shall inspect the proposed registered premises of an adult-use provider or adult-use marijuana-infused products provider and shall inspect the property to be used to ensure an applicant for licensure or license renewal is in compliance with this chapter. The department may not issue or renew a license if the applicant does not meet the requirements of this chapter.~~

~~(4) (a) The department shall license providers and marijuana-infused products providers according to a tiered canopy system.~~

~~(b) (i) The system shall include, at a minimum, the following license types:~~

~~(A) A micro tier canopy license allows for a canopy of up to 250 square feet at one registered premises.~~

~~(B) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one registered premises.~~

~~A minimum of 500 square feet must be equipped for cultivation.~~

~~(C) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two registered premises. A minimum of 1,100 square feet must be equipped for cultivation.~~

~~(D) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three registered premises. A minimum of 2,600 square feet must be equipped for cultivation.~~

~~(E) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four registered premises. A minimum of 5,100 square feet must be equipped for cultivation.~~

~~(F) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five registered premises. A minimum of 7,750 square feet must be equipped for cultivation.~~

~~(G) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five registered premises. A minimum of 10,250 square feet must be equipped for cultivation.~~

~~(H) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five registered premises. A minimum of 13,250 square feet must be equipped for cultivation.~~

~~(I) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five registered premises. A minimum of 15,250 square feet must be equipped for cultivation.~~

~~(J) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six registered premises. A minimum of 17,775 square feet must be equipped for cultivation.~~

~~(K) A tier 10 canopy license allows for a canopy of up to 30,000 square feet at up to seven registered premises. A minimum of 24,000 square feet must be equipped for cultivation.~~

~~(ii) As used in this subsection (4)(b), "equipped for cultivation" means that the space is either ready for cultivation or in use for cultivation.~~

~~(c) An adult-use provider or adult-use marijuana-infused products provide) who has reached capacity under the existing license may apply to advance to the next licensing tier. The department:~~

~~(i) may increase a licensure level by only one tier at a time; and~~

~~(ii) shall conduct an inspection of the adult-use provider or adult-use marijuana-infused products provider's registered premises and proposed premises within 30 days of receiving the application and before approving the application.~~

~~(d) The department may create additional licensing tiers by rule if a provider with a tier 10 canopy~~

~~license petitions the department to create a new licensure level and:~~

~~(i) the producer or provider demonstrates that the licensee is using the full amount of canopy currently authorized; and~~

~~(ii) the tracking system shows the licensee is selling at least 80% of the marijuana or marijuana-infused products produced by the square footage of the licensee's existing license over the 2 previous quarters or the licensee can otherwise demonstrate to the department that there is a market for the marijuana or marijuana-infused products it seeks to produce.~~

~~(e) The department is authorized to create additional tiers as necessary, including an adjusted tier system to account for outdoor cultivation.~~

~~(f) The registered premises limitations for each tier of licensing apply only to registered premises at which marijuana is cultivated. The limitations do not apply to the number of adult-use dispensaries an adult-use provider or adult-use marijuana-infused products provider may have.~~

~~(g) The department shall require evidence that the licensee is able to successfully cultivate the minimum amount of space allowed for the tier and sell the amount of marijuana produced by the minimum cultivation level before allowing a licensee to move up a tier. Annual licensing fees must be prorated based on the time licensed at a specific tier if less than 1 year.~~

~~(h) No person may be initially licensed greater than a tier 2 unless the person is purchasing a business licensed at a tier higher than tier 2 or the person is already licensed at higher than tier 2 under Title 50, chapter 46, part 3, and is applying for the equivalent size tier under this chapter.~~"

Section 38. Section 16-12-106, MCA, is amended to read:

"**16-12-106. Personal use and cultivation of marijuana -- penalties.** (1) Subject to the limitations in 16-12-108, the following acts are lawful and may not be an offense under state law or the laws of any local government within the state, be a basis to impose a civil fine, penalty, or sanction, or be a basis to detain, search, or arrest, or otherwise deny any right or privilege, or to seize or forfeit assets under state law or the laws of any local government for a person who is 21 years of age or older:

(a) possessing, purchasing, obtaining, using, ingesting, inhaling, or transporting 1 ounce or less of usable marijuana, except that not more than 8 grams may be in a concentrated form and not more than 800

milligrams of THC may be in edible marijuana products meant to be eaten or swallowed in solid form;

(b) transferring, delivering, or distributing without consideration, to a person who is 21 years of age or older, 1 ounce or less of usable marijuana, except that not more than 8 grams may be in a concentrated form and not more than 800 milligrams of THC may be in edible marijuana products meant to be eaten or swallowed in solid form;

(c) in or on the grounds of a private residence, possessing, planting, or cultivating up to four mature marijuana plants and four seedlings and possessing, harvesting, drying, processing, or manufacturing the marijuana, provided that:

(i) marijuana plants and any marijuana produced by the plants in excess of 1 ounce must be kept in a locked space in or on the grounds of one private residence and may not be visible by normal, unaided vision from a public place;

(ii) not more than twice the number of marijuana plants permitted under this subsection (1)(c) may be cultivated in or on the grounds of a single private residence simultaneously;

(iii) a person growing or storing marijuana plants under this subsection (1)(c) must own the private residence where the plants are cultivated and stored or obtain written permission to cultivate and store marijuana from the owner of the private residence; and

(iv) no portion of a private residence used for cultivation of marijuana and manufacture of ~~marijuana-infused~~ marijuana products for personal use may be shared with, rented, or leased to ~~an adult-use provider or an adult-use marijuana-infused products provider~~ a marijuana business;

(d) assisting another person who is at least 21 years of age in any of the acts permitted by this section, including allowing another person to use one's personal residence for any of the acts described in this section; and

(e) possessing, purchasing, using, delivering, distributing, manufacturing, transferring, or selling to persons 18 years of age or older paraphernalia relating to marijuana.

(2) A person who cultivates marijuana plants that are visible by normal, unaided vision from a public place in violation of subsection (1)(c)(i) is subject to a civil fine not exceeding $250 and forfeiture of the marijuana.

(3) A person who cultivates marijuana plants or stores marijuana outside of a locked space is subject

to a civil fine not exceeding $250 and forfeiture of the marijuana.

(4) A person who smokes marijuana in a public place, other than in an area licensed for that activity by the department, is subject to a civil fine not exceeding $50.

(5) For a person who is under 21 years of age and is not a registered cardholder, possession, use, ingestion, inhalation, transportation, delivery without consideration, or distribution without consideration of 1 ounce or less of marijuana is punishable by forfeiture of the marijuana and the underage person's choice between:

(a) a civil fine not to exceed $100; or

(b) up to 4 hours of drug education or counseling in lieu of the fine.

(6) For a person who is under 18 years of age and is not a registered cardholder, possession, use, transportation, delivery without consideration, or distribution without consideration of marijuana paraphernalia is punishable by forfeiture of the marijuana paraphernalia and the underage person's choice between:

(a) a civil fine not to exceed $100; or

(b) up to 4 hours of drug education or counseling in lieu of the fine.

(7) Unless otherwise permitted under the provisions of ~~Title 50, chapter 46, part 3~~ [sections ~~14 through 28~~ 9 through 23], the possession, production, delivery without consideration to a person 21 years of age or older, or possession with intent to deliver more than 1 ounce but less than 2 ounces of marijuana or more than 8 grams but less than 16 grams of marijuana in a concentrated form is punishable by forfeiture of the marijuana and:

(a) for a first violation, the person's choice between a civil fine not exceeding $200 or completing up to 4 hours of community service in lieu of the fine;

(b) for a second violation, the person's choice between a civil fine not exceeding $300 or completing up to 6 hours of community service in lieu of the fine;

(c) for a third or subsequent violation, the person's choice between a civil fine not exceeding $500 or completing up to 8 hours of community service in lieu of the fine; and

(d) for a person under 21 years of age, the person's choice between a civil fine not to exceed $200 or attending up to 8 hours of drug education or counseling in lieu of the fine.

~~(8) A person may not be denied adoption, custody, or visitation rights relative to a minor solely for~~

~~conduct that is permitted by this chapter.~~

~~(9) A person may not be denied access to or priority for an organ transplant or denied access to health care solely for conduct that is permitted by this chapter.~~

~~(10) A person currently under parole, probation, or other state supervision or released awaiting trial or other hearing may not be punished or otherwise penalized solely for conduct that is permitted by this chapter.~~

~~(11) A holder of a professional or occupational license may not be subjected to professional discipline for providing advice or services arising out of or related to conduct that is permitted by this chapter solely on the basis that marijuana is prohibited by federal law.~~

~~(12) It is the public policy of the state of Montana that contracts related to the operation of licensees be enforceable.~~"

Section 39. Section 16-12-107, MCA, is amended to read:

"**16-12-107. (Effective ~~October 1, 2021~~ January 1, 2022) Legal protections -- allowable amounts.** (1) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A cultivator may have the canopy allotment allowed by the department. ~~The canopy allotment is a cumulative total for all of the adult-use provider's or adult-use marijuana-infused products provider's registered premises.~~

(2) Except as provided in 16-12-108, a person licensed under this chapter may not be arrested, prosecuted, penalized, or denied any right or privilege, including but not limited to civil fine or disciplinary action by a professional licensing board or the department of labor and industry, solely because the person cultivates, manufactures, possesses, or transports marijuana in the amounts and manner allowed under this chapter.

(3) A person may not be arrested or prosecuted for possession, conspiracy as provided in 45-4-102, or any other offense solely for being in the presence or vicinity of the use of marijuana and ~~marijuana-infused~~ marijuana products as permitted under this chapter.

(4) Except as provided in 16-12-210, possession of or application for a license does not solely constitute probable cause to search a person or the property of a person or otherwise subject a person or property of a person to inspection by any governmental agency, including a law enforcement agency.

(5) The provisions of this section relating to protection from arrest or prosecution do not apply to a person unless the person has obtained a license prior to an arrest or the filing of a criminal charge. It is not a

defense to a criminal charge that a person obtains a license after an arrest or the filing of a criminal charge.

(6) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A cultivator or manufacturer is presumed to be engaged in the use of marijuana as allowed by this chapter if the person is in possession of an amount of marijuana that does not exceed the amount permitted under this chapter."

Section 40. Section 16-12-108, MCA, is amended to read:

"**16-12-108. Limitations of act.** (1) This chapter does not permit:

(a) any individual to operate, navigate, or be in actual physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana or marijuana products;

(b) consumption of marijuana or marijuana products while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated;

(c) smoking or consuming marijuana while riding in the passenger seat within an enclosed compartment of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated;

(d) delivery or distribution of marijuana or marijuana products, with or without consideration, to a person under 21 years of age;

(e) purchase, consumption, or use of marijuana or marijuana products by a person under 21 years of age;

(f) possession or transport of marijuana or marijuana products by a person under 21 years of age unless the underage person is at least 18 years of age and is an employee of ~~an adult-use provider, adult-use marijuana-infused products provider, or adult-use dispensary~~ a marijuana business licensed under this chapter and engaged in work activities;

(g) possession or consumption of marijuana or marijuana products, or possession of marijuana paraphernalia:

(i) on the grounds of any property owned or leased by a school district, a public or private preschool, school, or postsecondary school as defined in 20-5-402;

(ii) in a school bus or other form of public transportation;

(iii) in a health care facility as defined in 50-5-101; or

(iv) on the grounds of any correctional facility;

(h) ~~smoking~~ using marijuana or marijuana products in a location where smoking tobacco is prohibited;

(i) consumption of marijuana or marijuana products in a public place, except as allowed by the department;

(j) conduct that endangers others;

(k) undertaking any task while under the influence of marijuana or marijuana products if doing so would constitute negligence or professional malpractice; or

(l) performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food-grade ethanol unless licensed for this activity by the department.

(2) A person may not cultivate marijuana in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

~~(2)~~(4) Nothing in this chapter may be construed to:

(a) require an employer to permit or accommodate conduct otherwise allowed by this chapter in any workplace or on the employer's property;

(b) prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while intoxicated by marijuana or marijuana products;

(c) prevent an employer from declining to hire, discharging, disciplining, or otherwise taking an adverse employment action against an individual with respect to hire, tenure, terms, conditions, or privileges of employment because of the individual's violation of a workplace drug policy or intoxication by marijuana or marijuana products while working;

(d) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition; or

(e) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

~~(3)~~(5) Nothing in this chapter may be construed to prohibit a person from prohibiting or otherwise

regulating the consumption, cultivation, distribution, processing, sale, or display of marijuana, ~~marijuana-infused~~ marijuana products, and marijuana paraphernalia on private property the person owns, leases, occupies, or manages~~, except that a lease agreement executed after January 1, 2021, may not prohibit a tenant from lawfully possessing and consuming marijuana by means other than smoking unless required by federal law or to obtain federal funding~~.

~~(4) Nothing in this chapter limits the rights, privileges, immunities, or defenses provided under Title 50, chapter 46, part 3.~~

~~(5)~~(6) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A licensee who violates 15-64-103 or 15-64-104 or fails to pay any other taxes owed to the department under Title 15, is subject to revocation of the person's license from the date of the violation until a period of up to 1 year after the department ~~of revenue~~ certifies compliance with 15-64-103 or 15-64-104.

(7) Unless specifically exempted by this chapter, the provisions of Title 45, chapter 9, apply to the conduct of consumers, licensees, and registered cardholders."

Section 41. Section 16-12-109, MCA, is amended to read:

"**16-12-109. (Effective ~~October 1, 2021~~ January 1, 2022) Unlawful conduct by licensees -- penalties.** (1) If the department has reasonable cause to believe that a licensee has violated a provision of this chapter or a rule of the department, it may, in its discretion and in addition to any other penalties prescribed:

(a) reprimand a licensee;

(b) revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed $3,000.

(2) The department shall consider mitigating circumstances and may adjust penalties within penalty ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances are:

(a) compliance with the provisions of this chapter within the prior 3 years;

(b) the licensee has made good faith efforts to prevent a violation; or

(c) the licensee has cooperated in the investigation of the violation and the licensee or an employee

or agent of the licensee accepts responsibility.

(3) The department shall consider aggravating circumstances and may adjust penalties within penalty ranges based on its consideration of aggravating circumstances. Examples of aggravating circumstances are:

(a) prior warnings about compliance problems;

(b) prior violations of the provisions of this chapter within the past 3 years;

(c) lack of written policies governing employee conduct;

(d) additional violations revealed during the course of the investigation;

(e) efforts to conceal a violation;

(f) intentional violations; or

(g) involvement of more than one patron or employee in a violation.

(4) For each licensing program regulated by the department under this chapter, the department is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding licensees and license applicants and regarding possible unlicensed practice.

~~(1)~~(5) The department shall revoke and may not reissue a license or endorsement belonging to ~~an individual who~~ a person:

(a) whose controlling beneficial owner is an individual convicted of a felony drug offense;

(b) who allows another ~~individual~~ person not authorized or lawfully allowed to be in possession of the ~~individual's~~ license; ~~or~~

~~(c) fails to cooperate with the department concerning an investigation or inspection if the individual is licensed and cultivating marijuana, engaging in manufacturing, or manufacturing marijuana-infused products.~~

(c) who transports marijuana or marijuana products outside of Montana, unless otherwise allowed by federal law;

(d) operates a carbon dioxide or hydrocarbon extraction system without obtaining a manufacturing license;

(e) purchases marijuana from an unauthorized source in violation of this chapter; or

(f) sells, distributes, or transfers marijuana or marijuana products to a person the licensee knows or should know is under 21 years of age.

~~(2) The department shall revoke a license issued under this chapter if the licensee:~~

~~(a) purchases marijuana from an unauthorized source in violation of this chapter;~~

~~(b) sells marijuana, marijuana concentrate, or marijuana-infused products to a person the licensee knows or should know is under 21 years of age;~~

~~(c) operates a carbon dioxide or hydrocarbon extraction system without obtaining a manufacturing endorsement; or~~

~~(d) transports marijuana or marijuana-infused products outside of Montana, unless allowed by federal law.~~

~~(3) A licensee who violates the advertising restrictions imposed under 16-12-211 is subject to:~~

~~(a) a written warning for the first violation;~~

~~(b) a 5-day license suspension or a $500 fine for a second violation;~~

~~(c) a 5-day license suspension or a $1,000 fine for a third violation;~~

~~(d) a 30-day license suspension or a $2,500 fine for a fourth violation; and~~

~~(e) a license revocation for a fifth violation.~~

~~(4) Except for the license revocations required under this section, a licensee shall choose whether to pay a fine or be subject to a license suspension when a penalty is imposed under this section.~~

~~(5)~~(6) A licensee whose license is revoked may not reapply for licensure for 3 years from the date of the revocation.

~~(6) If no other penalty is specified under this chapter, an adult-use provider or adult-use marijuana-infused products provider who violates this chapter is punishable by a civil fine not to exceed $500, unless otherwise provided in this chapter or unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of Title 45.~~

(7) Review of a department action imposing a fine, suspension, or revocation under this chapter must be conducted as a contested case hearing before the department's office of dispute resolution under the provisions of the Montana Administrative Procedure Act.

(a) A person may appeal any decision of the department concerning the issuance, rejection, suspension, or revocation of a license provided for by this chapter to the district court of the first judicial district.

(b) An appeal pursuant to subsection (7)(a) shall be made by filing a complaint setting forth the

grounds for relief and the nature of relief demanded with the district court within 30 days following receipt of notice of the department's final decision."

Section 42. Section 16-12-110, MCA, is amended to read:

"**16-12-110. (Effective ~~October 1, 2021~~ January 1, 2022) Legislative monitoring.** (1) The ~~revenue interim~~ economic affairs committee shall provide oversight of the department's activities pursuant to this chapter, including but not limited to monitoring of:

(a) the number of licensees;

(b) issues related to the cultivation, manufacture, sale, testing, and use of marijuana; and

(c) the development, implementation, and use of the seed-to-sale tracking system established in accordance with 16-12-105.

(2) The ~~revenue~~ economic affairs interim committee shall identify issues likely to require future legislative attention and develop legislation to present to the next regular session of the legislature.

(3) (a) The department shall periodically report to the ~~revenue~~ economic affairs interim committee and submit a report to the legislative clearinghouse, as provided in 5-11-210, on persons who are licensed or registered pursuant to 16-12-203. The report must include:

(i) the number of ~~adult-use providers, adult-use marijuana-infused products providers,~~ cultivators, manufacturers, and ~~adult-use~~ dispensaries licensed pursuant to this chapter;

(ii) the number ~~of endorsements approved for manufacturing~~ and type of violations committed by licensees;

(iii) the number of licenses revoked; and

(iv) the amount of marijuana and marijuana products cultivated and sold pursuant to this chapter.

(b) The report may not provide any identifying information of ~~adult-use providers, adult-use marijuana-infused products providers, or adult-use~~ cultivators, manufacturers, and dispensaries except basic geographic or other statistical information.

(4) The report on inspections required under 16-12-210 must include, at a minimum, the following information for both announced and unannounced inspections:

(a) the number of inspections conducted, by canopy licensure tier;

(b) the number of ~~adult-use providers or adult-use marijuana-infused products providers~~ licensees that were inspected more than once during the year;

(c) the number of inspections that were conducted because of complaints made to the department; and

(d) the types of enforcement actions taken as a result of the inspections.

~~(5) The reports provided for in this section must also be provided to the transportation interim committee provided for in 5-5-233.~~"

Section 43. Section 16-12-111, MCA, is amended to read:

"**16-12-111. ~~(Effective October 1, 2021)~~ Marijuana ~~compensation~~ state special revenue account -- operating reserve -- transfer of excess funds.** (1) There is a dedicated marijuana compensation state special revenue account within the state special revenue fund established in 17-2-102, to be administered by the department.

(2) The account consists of:

(a) money deposited into the account pursuant to this chapter;

(b) the taxes collected pursuant to Title 15, chapter 64, part 1;

(c) license and registered cardholder fees deposited into the account pursuant to this chapter; and

~~(d) taxes deposited into the account pursuant to [section 9]; and~~

~~(e)~~(d) civil penalties collected under this chapter.

(3) Except as provided in subsection (4), money in the account must be used by the department for the purpose of administering the provisions of this chapter.

(4) At the end of each fiscal year, the department shall transfer funds in excess of a 3-month operating reserve necessary to fund operating costs at the beginning of the next fiscal year in the following order:

(a) an amount not to exceed $6 million must be transferred to the marijuana healing and ending addiction through recovery and treatment (HEART) fund account established in 17-6-606;

(b) the net balance remaining after distribution to the marijuana HEART fund must be distributed as follows:

(i) 88% to the general fund; and

(ii) 12%, but not to exceed $1.95 million annually, in equal proportions to the:

(A) state park account established in 23-1-105(1);

(B) trails and recreational facilities account established in 23-2-108; and

(C) nongame wildlife account established in 87-5-121.

(iii) If the net balance under subsection (4)(b)(ii) exceeds $1.95 million, any amount above $1.95 million dollars shall be distributed to the general fund.

~~(2) Marijuana sales taxes collected under the provisions of part 4 of this chapter must, in accordance with the provisions of17-2-124, be deposited into the account along with any interest and income earned on the account.~~

~~(3) Funds deposited into the account must be transferred in the following amounts to provide funding as set out below:~~

~~(a) 4.125% of the funds to be deposited into the nongame wildlife account established in 87-5-121;~~

~~(b) 4.125% of the funds to be deposited into the state park account established in 23-1-105(1);~~

~~(c) 4.125% of the funds to be deposited into the trails and recreational facilities account established in 23-2-108;~~

~~(d) 37.125% of the funds to be deposited to the credit of the department of fish, wildlife, and parks to be used solely as funding for wildlife habitat in the same manner as funding generated under 87-1-242(3) and used pursuant to 87-1-209;~~

~~(e) 10.5% to the state general fund; and~~

~~(f) the remainder in the subaccounts provided for in this subsection (3)(f). There are subaccounts in the marijuana compensation special revenue account established by subsection (1). Funding deposited into this account under subsection (2) is further deposited into subaccounts to be used only as follows:~~

~~(i) 10% of the funds to be deposited into a subaccount to be administered by the department of public health and human services to provide grants to existing agencies and not-for-profit organizations, whether government or community-based, to increase access to evidence-based low-barrier drug addiction treatment, prioritizing medically proven treatment and overdose prevention and reversal methods and public or private treatment options with an emphasis on reintegrating recipients into their local communities, to support overdose~~

~~prevention education, and to support job placement, housing, and counseling for those with substance use disorders;~~

~~(ii) 10% of the funds to be deposited into a subaccount to be administered by the department of commerce for distribution to the local government representing the locality where the retail sales occurred;~~

~~(iii) 10% of the funds to be deposited into a subaccount to be administered by the veterans' affairs division of the department of military affairs to provide services and assistance for all Montana veterans and surviving spouses and dependents; and~~

~~(iv) 10% of the funds to be deposited into a subaccount to be administered by the Montana department of public health and human services to administer medicaid rate increases that provide for a wage increase to health care workers who provide direct medicaid-funded home and community health services for elderly and disabled persons.~~

~~(4) (a) Funds transferred from the accounts and subaccounts provided in subsection (3) may be used only to increase revenue for the purposes specified and may not be used to supplant other sources of revenue used for these purposes.~~

~~(b) Funds deposited into the account provided in subsection (1) may be used only to increase revenue to each special revenue account or subaccount set forth in subsection (3) and may not be used to supplant other sources of revenue for these purposes.~~"

Section 44. Section 16-12-112, MCA, is amended to read:

"**16-12-112. (Effective ~~October 1, 2021~~ <u>January 1, 2022</u>) Rulemaking authority -- fees.** (1) The department may adopt rules to implement and administer this chapter, including:

(a) the manner in which the department will consider applications for licenses<u>, permits,</u> and endorsements and renewal of licenses<u>, permits,</u> and endorsements;

(b) the acceptable forms of proof of Montana residency;

(c) the procedures for obtaining fingerprints for the fingerprint-based and name-based background checks required under ~~16-12-203~~ <u>[section 2]</u>;

(d) the security and operating requirements for ~~adult-use dispensaries~~ <u>licensees</u>;

(e) the security and operating requirements for manufacturing, including but not limited to

requirements for:

(i) safety equipment;

(ii) extraction methods, including solvent-based and solvent-free extraction; and

(iii) post-processing procedures;

(f) notice and contested case hearing procedures for fines or license and endorsement revocations, suspensions, or modifications;

(g) implementation of a system to allow the tracking of marijuana and ~~marijuana-infused~~ marijuana products as required by 16-12-105;

(h) labeling and packaging standards that protect public health by requiring the listing of pharmacologically active ingredients, including, but not limited to, ~~tetrahydrocannabinol (THC)~~ THC, cannabidiol (CBD) and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, the number of servings per package, and quantity limits per sale to comply with the allowable possession amount;

(i) investigating and making rules to limit, if necessary, the appropriate THC potency percentages for marijuana and marijuana products;

~~(i)~~(j) requirements that packaging and labels may not be made to be attractive to children, required warning labels, and that marijuana and ~~marijuana-infused~~ marijuana products be sold in resealable, child-resistant packaging to protect public health as provided in 16-12-208;

~~(j)~~(k) requirements and standards for the testing and retesting of marijuana and ~~marijuana-infused~~ marijuana products, including testing of samples collected during the department's inspections of ~~registered~~ licensed premises;

~~(k)~~(l) the amount of variance allowable in the results of raw testing data that would warrant a departmental investigation of inconsistent results as provided in 16-12-202;

~~(l)~~(m) requirements and standards to prohibit or limit marijuana, ~~marijuana-infused~~ marijuana products, and marijuana accessories that are unsafe or contaminated;

~~(m)~~(n) the activities that constitute advertising in violation of 16-12-211;

~~(n)~~(o) requirements and incentives to promote renewable energy, reduce water usage, and reduce packaging waste to maintain a clean and healthy environment in Montana; and

~~(o)~~(p) the fees for ~~endorsements for manufacturing,~~ testing laboratories, ~~additional canopy licensure~~

~~tiers created in accordance with 16-12-105, and~~ the fingerprint-based and name-based background checks required under ~~16-12-203~~ [section 2], employee certification, the marijuana transporter license, marijuana worker permits, and other fees necessary to administer and enforce the provisions of this chapter. The fees ~~and other revenue collected through the taxes paid under 16-12-401~~ established by the department, taxes collected pursuant to Title 15, chapter 64, part 1, civil penalties imposed pursuant to this chapter, and the licensing fees established by rule and in ~~16-12-201~~ part 2 of this chapter must be sufficient to offset the expenses of administering this chapter but may not exceed the amount necessary to cover the costs to the department of implementing and enforcing this chapter.

(2) The department may not adopt any rule or regulation that is unduly burdensome or undermines the purposes of this chapter.

(3) The department may consult or contract with other public agencies in carrying out its duties under this chapter."

Section 45. Section 16-12-201, MCA, is amended to read:

"**16-12-201. (~~Effective October 1, 2021~~ Effective January 1, 2022) Licensing of ~~providers, marijuana-infused products providers, and dispensaries for adult use~~ cultivators, manufacturers, and dispensaries.** ~~No later than October 1, 2021, the department shall promulgate rules and regulations to administer and enforce this chapter and shall begin accepting applications for and issuing licenses. The rules may not be unduly burdensome. For the first 12 months after the department begins to receive applications,~~ (1)(a) Between January 1, 2022, and June 30, 2023, the department ~~shall~~ may only accept applications from and issue licenses to ~~providers, marijuana-infused products providers, and dispensaries licensed under Title 50, chapter 46, part 3, that are~~ former medical marijuana licensees that were licensed by the department of public health and human services on November 3, 2020, and are in good standing with the department ~~of public health and human services~~ and in compliance with this chapter, ~~and~~ rules adopted by the department, and any applicable local regulations or ordinances as of [the effective date of this section].

(b) The department shall begin accepting applications for and issuing licenses to cultivate, manufacture, or sell marijuana or marijuana products to applicants who are not former medical marijuana licensees under subsection (1)(a) on or after July 1, 2023.

(2) The department shall adopt rules to govern the operation of former medical marijuana licensees and facilitate the process of transitioning former medical marijuana licensees to the appropriate license under this chapter with a minimum of disruption to business operations.

(a) Former medical marijuana licensees that intend to sell marijuana or marijuana products exclusively to registered cardholders at a medical marijuana dispensary may do so without interruption under the licensee's existing license until the former medical marijuana licensee's next license renewal date that falls after January 1, 2022, by which time the former medical licensee must have applied for and obtained the appropriate licensure under this chapter to continue operations, unless an extension of time is granted by the department.

(b) Former medical marijuana licensees that intend to sell marijuana or marijuana products to consumers in addition to registered cardholders shall apply for the appropriate licensure under this chapter in conjunction with their application for an adult-use dispensary license, and may continue sales to registered cardholders during the pendency of the applications.

(c) For the purpose of this subsection (2), "appropriate licensure" means a cultivator license, medical marijuana dispensary license, and, if applicable, a manufacturer license.

(3) The department may amend or issue licenses to provide for staggered expiration dates. The department may provide for initial license terms of greater than 12 months but no more than 23 months in adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term implementing staggered license terms may be prorated by the department."

Section 46. Section 16-12-202, MCA, is amended to read:

"**16-12-202. (Effective ~~October 1, 2021~~ January 1, 2022) Testing laboratories -- licensing -- inspection -- dual licensure -- state laboratory responsibility.** (1) (a) A person who obtains a testing laboratory license or is an employee of a licensed testing laboratory is authorized to possess and test marijuana as allowed by this chapter.

(b) A person who is a controlling beneficial owner of a testing laboratory or holds a financial interest in a licensed testing laboratory may not be a controlling beneficial owner or have a financial interest in any entity involved in the cultivation, manufacture, or sale of marijuana or marijuana products for whom testing services

are performed.

(2)~~(1)~~ (a) The state laboratory shall ~~license~~ endorse a testing ~~laboratories~~ laboratory to perform the testing required under 16-12-206 and 16-12-209 before a testing laboratory may apply for licensure or renewal with the department.

(b) (i) The state laboratory shall inspect a testing laboratory before ~~issuing or renewing a license~~ endorsing a testing laboratory for licensure or renewal and may not ~~issue or renew a license~~ endorse a testing laboratory for licensure or renewal if the applicant does not meet the requirements of 16-12-206 and this section.

(ii) The state laboratory may not issue a temporary license while an inspection is pending.

~~(iii) Inspections conducted under this section must include the review provided for in 50-46-311(1)(b).~~

(3) An inspection conducted for licensure or renewal of a license must include a review of an applicant's or testing laboratory's:

(a) physical premises where testing will be conducted;

(b) instrumentation;

(c) protocols for sampling, handling, testing, reporting, security and storage, and waste disposal;

(d) raw data on tests conducted by the laboratory, if the inspection is for renewal of a license; and

(e) vehicles used for transporting marijuana or marijuana product samples for testing purposes.

(4) Upon receiving an endorsement from the state laboratory for licensure or annual renewal, a testing laboratory must apply for licensure, or renewal, with the department by submitting to the department:

(a) the information required by 16-12-203; and

(b) a fee that the department shall establish by rule.

~~(2)~~(5) The state laboratory shall:

~~(a) use the criteria established under 50-46-311 in evaluating and approving licenses issued under this section;~~

~~(b) use the criteria established under 50-46-304(6) to establish and enforce standard operating procedures and testing standards for testing laboratories to ensure that consumers receive consistent and uniform information about the potency and quality of the marijuana and marijuana-infused products they receive; and~~

~~(c) investigate inconsistent test results using the procedure provided for in 50-46-304(7).~~

(a) measure the tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic acid content of marijuana and marijuana products;

(b) test marijuana and marijuana products for pesticides, solvents, moisture levels, mold, mildew, and other contaminants; and

(c) establish and enforce standard operating procedures and testing standards for testing laboratories to ensure that consumers and registered cardholders receive consistent and uniform information about the potency and quality of the marijuana and marijuana products they receive. The state laboratory shall:

(i) consult with independent national or international organizations that establish testing standards for marijuana and marijuana products;

(ii) require testing laboratories to follow uniform standards and protocols for the samples accepted for testing and the processes used for testing the samples; and

(iii) track and analyze the raw data for the results of testing conducted by testing laboratories to ensure that the testing laboratories are providing consistent and uniform results.

(6) The analytical laboratory services provided by the department of agriculture pursuant to 80-1-104 may be used for the testing.

(7) The department may retain the services of the analytical laboratory provided by the department of agriculture pursuant to 80-1-104 for the testing contemplated in this section.

~~(3)~~(8) If an analysis of raw testing data indicates that licensees are providing test results that vary among testing laboratories by an amount determined by the state laboratory by rule, the department shall investigate the inconsistent results and determine within 60 days the steps the testing laboratories must take to ensure that each testing laboratory provides accurate and consistent results.

~~(4)~~(9) If the analysis of raw testing data indicates a testing laboratory may be providing inconsistent results, the state laboratory shall suspend the testing laboratory's license until additional testing determines whether the results are consistent.

~~(5)~~(10) The ~~state laboratory~~ department shall revoke a testing laboratory's license upon a determination that the laboratory is:

(a) providing test results that are fraudulent or misleading; or

(b) providing test results without having:

(i) the equipment needed to test marijuana, marijuana concentrates, or ~~marijuana-infused~~ marijuana products; or

(ii) the equipment required under this chapter to conduct the tests for which the laboratory is providing results.

~~(6)~~(11) A revocation under this section is subject to judicial review.

~~(7) The state laboratory:~~

~~(a) may license a testing laboratory to perform both the testing required under this chapter and under Title 50, chapter 46; and~~

~~(b) shall use the same administrative rules for testing laboratories licensed under this chapter and under Title 50, chapter 46.~~"

Section 47. Section 16-12-203, MCA, is amended to read:

"**16-12-203. (Effective ~~October 1, 2021~~ January 1, 2022) ~~Provider~~ Licensing types -- requirements -- limitations -- activities.** (1) (a) Subject to ~~subsections (1)(b) and~~ subsection (3) and this subsection (1), the department shall issue a license to or renew a license for a person who is applying to be ~~an adult-use provider or adult-use marijuana-infused products provider~~ a cultivator, manufacturer, medical-marijuana dispensary, adult-use dispensary, or testing laboratory if the person submits to the department:

(i) the person's name, date of birth, and street address on a form prescribed by the department;

(ii) proof that the natural person having day-to-day operational control over the business is a Montana resident;

~~(iii) fingerprints meeting the requirements for a fingerprint-based background check by the department of justice and the federal bureau of investigation:~~

~~(A) with the application for initial licensure; and~~

~~(B) every 3 years thereafter;~~

~~(iv)~~(iii) a statement, on a form prescribed by the department, that the person:

(A) will not divert to any other person the marijuana that the person cultivates or the ~~marijuana-infused~~ marijuana products that the person manufactures for consumers or registered cardholders, unless the

marijuana or ~~marijuana-infused~~ marijuana products are sold to another ~~adult-use provider or~~ licensee as part of a sale of a business as allowed under this section; and

(B) has no pending citations for violations occurring under this chapter or the marijuana laws of any other state or jurisdiction;

~~(v)~~(iv) the street address of the location at which marijuana, marijuana concentrates, or ~~marijuana-infused~~ marijuana products will be cultivated, ~~or~~ manufactured, sold, or tested; and

~~(vi) a fee as determined by the department not to exceed the costs of required background checks and associated administrative costs of processing the license.~~

(v) proof that the applicant has source of funding from a suitable source. A lender or other source of money or credit may be found unsuitable if the source:

(A) is a person whose prior financial or other activities or criminal record:

(B) poses a threat to the public interest of the state;

(C) poses a threat to the effective regulation and control of marijuana and marijuana products; or

(D) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business.

(b) If the person to be licensed consists of more than one individual, the names of all owners must be submitted along with the fingerprints and date of birth of each owner having at least a 5% controlling beneficial ownership interest.

(c) Nonindividuals who apply for the issuance of a marijuana business license shall disclose to the department the following:

(i) a complete and accurate organizational chart of the marijuana business disclosing the identity and ownership percentages of its controlling beneficial owners;

(ii) if the controlling beneficial owner is a publicly traded corporation, the controlling beneficial owners' managers and any beneficial owners that directly or indirectly beneficially own 5% or more of the owner's interest in the controlling beneficial owner;

(iii) if the controlling beneficial owner is not a publicly traded corporation, the controlling beneficial owner's managers and any beneficial owners that directly or indirectly beneficially own 5% or more of the owner's interest in the controlling beneficial owner;

(iv) if the controlling beneficial owner is a natural person, the natural person's identifying information;

(v) a person that is both a passive beneficial owner and a financial interest holder in the marijuana business; and

(vi) any financial interest holder that holds two or more financial interests in the marijuana business or that is contributing over 50% of the operating capital of the marijuana business.

(d) The department may request that the marijuana business disclose each beneficial owner and affiliate of an applicant, or marijuana business, or controlling beneficial owner that is not a publicly traded corporation.

(e) An applicant or marijuana business that is not a publicly traded corporation shall affirm under penalty of perjury that it exercised reasonable care to confirm that its passive beneficial owners, financial interest holders, and qualified institutional investors are not persons prohibited pursuant to this section, or otherwise restricted from holding an interest under this chapter. An applicant's or marijuana business's failure to exercise reasonable care is a basis for denial, fine, suspension, revocation, or other sanction by the department.

(f) An applicant or marijuana business that is a publicly traded corporation shall affirm under penalty of perjury that it exercised reasonable care to confirm that its passive beneficial owners, financial interest holders, and qualified institutional investors are not persons prohibited pursuant to this section, or otherwise restricted from holding an interest under this chapter. An applicant's or marijuana business's failure to exercise reasonable care is a basis for denial, fine, suspension, revocation, or other sanction by the department.

(g) This section does not restrict the department’s ability to reasonably request information or records at renewal or as part of any other investigation following initial licensure of a marijuana business.

~~(2) The department shall conduct:~~

~~(a) a fingerprint-based background check in association with an application for initial licensure and every 3 years thereafter; and~~

~~(b) a name-based background check in association with an application for initial licensure and each year thereafter except years that an applicant is required to submit fingerprints for a fingerprint-based background check.~~

~~(3)~~(2) The department may not license a person under this chapter if the person or an owner,

including a person with a financial interest:

~~(a) has a felony conviction involving fraud, deceit, or embezzlement or for distribution of drugs to a minor within the past 5 years and, after an investigation, the department finds that the applicant has not been sufficiently rehabilitated as to warrant the public trust;~~

~~(b) is in the custody of the department of corrections or a youth court;~~

~~(c) has been convicted of a violation under 16-12-302;~~

~~(d) has resided in Montana for less than 1 year; or~~

~~(e) is under 18 years of age.~~

(a) has a felony conviction or a conviction for a drug offense, including but not limited to, a conviction for a violation of any marijuana law in any other state within the past 5 years and, after an investigation, the department finds that the applicant has not been sufficiently rehabilitated as to warrant the public trust;

(b) is in the custody of or under the supervision of the department of corrections or a youth court;

(c) has been convicted of a violation under [section ~~24~~ 19] or of making a fraudulent representation under the former medical marijuana program administered by the department of public health and human services;

(d) is under 21 years of age;

(e) has failed to:

(i) pay any taxes, interest, penalties, or judgments due to a government agency;

(ii) comply with any provisions of Title 15 or Title 16, including the failure to file any tax return or report;

(iii) stay out of default on a government-issued student loan;

(iv) pay child support; or

(v) remedy an outstanding delinquency for child support or for taxes or judgments owed to a government agency; or

(f) has had a license issued under this chapter or a former medical marijuana license revoked within 3 years of the date of the application.

~~(4)~~(3) Marijuana for use pursuant to this chapter must be cultivated and manufactured in Montana ~~until~~ unless federal law otherwise allows for the interstate distribution of marijuana.

~~(5)~~(4) Except as provided in 16-12-209, ~~an adult-use provider or adult-use marijuana-infused products~~

~~provider~~ a cultivator, manufacturer, medical marijuana dispensary, or adult-use dispensary shall:

(a) prior to selling marijuana or ~~marijuana-infused~~ marijuana products, submit samples to a testing ~~laboratories~~ laboratory pursuant to this chapter and administrative rules;

(b) allow the department to collect samples of marijuana or ~~marijuana-infused~~ marijuana products during inspections of ~~registered~~ licensed premises for testing as provided by the department by rule; and

(c) participate as required by the department by rule in a seed-to-sale tracking system established by the department pursuant to 16-12-105; and

~~(d) obtain the license from the department of agriculture if required by80-7-106for the adult-use provider or adult-use marijuana-infused products provider that sells live plants as part of a sale of the adult-use provider's business. An adult-use provider or adult-use marijuana-infused products provider required to obtain a nursery license is subject to the inspection requirements of 80-7-108.~~

~~(6)~~(5) (a) Except as provided in 16-12-205, a person licensed under this section may cultivate marijuana and manufacture ~~marijuana-infused~~ marijuana products for use by consumers or registered cardholders only at one of the following locations:

(i) a property that is owned by the ~~adult-use provider or adult-use marijuana-infused products provider~~ licensee; or

(ii) with written permission of the property owner filed with the department when applying for, or renewing a license, a property that is rented or leased by the ~~adult-use provider or adult-use marijuana-infused products provider~~ licensee.

(b) Except as provided in 16-12-205, no portion of the property used for cultivation of marijuana or manufacture of ~~marijuana-infused~~ marijuana products or marijuana concentrate may be shared with or rented or leased to another ~~adult-use provider, adult-use marijuana-infused products provider, or testing laboratory~~ licensee.

(c) Marijuana or marijuana products may not be consumed on the premises of any licensed premises

~~(7) A licensed adult-use provider or adult-use marijuana-infused products provider may:~~

~~(a)~~(6) A cultivator licensed under this chapter may, in accordance with licensing requirements set forth in this chapter and rules adopted by the department:

~~(i)~~(a) operate adult-use dispensaries; and

~~(ii)~~(b) –engage in manufacturing~~;~~.

~~(b) employ employees to cultivate marijuana, manufacture marijuana concentrates and marijuana-infused products, and dispense and transport marijuana and marijuana-infused products;~~

~~(c) provide a small amount of marijuana, marijuana concentrate, or marijuana-infused product cultivated or manufactured on the registered premises to a licensed testing laboratory or the department of agriculture;~~

~~(d) sell the adult-use provider's business, including live plants, inventory, material assets, and all licenses in accordance with rules adopted by the department; and~~

~~(e) hold a provider or marijuana-infused products provider license issued pursuant to Title 50, chapter 46, part 3.~~

~~(8) (a) Except as provided in subsection (8)(b), an adult-use provider or adult-use marijuana-infused products provider:~~

~~(i) shall sell marijuana the adult-use provider has cultivated or marijuana products derived from marijuana the adult-use marijuana-infused products provider has cultivated for at least 50% of the provider's total annual sales;~~

~~(ii) may sell marijuana or marijuana-infused products to another adult-use provider for subsequent resale for up to 50% of the adult-use provider's total annual sales;~~

~~(iii)~~(7) A cultivator or manufacturer:

(a) may contract or otherwise arrange for another party that is licensed to process ~~the adult provider's or adult marijuana-infused products provider's marijuana into marijuana-infused products or marijuana concentrates and return the marijuana-infused products or marijuana concentrates to the adult-use provider for sale~~ a cultivator's or manufacturer's marijuana into marijuana products and return the marijuana products to the cultivator or manufacturer for sale; and

~~(iv)~~(b) except as allowed pursuant to 16-12-207, may not open a dispensary ~~or allow for any on-site use~~ before obtaining the required license ~~or~~ and before the department has completed the inspection required under this chapter unless permitted to do so pursuant to 16-12-207.

~~(b) The department may adjust the percentages set forth in subsection (8)(a) for an individual license holder based on unforeseen circumstances leading to the loss of plants or products.~~"

Section 48. Section 16-12-204, MCA, is amended to read:

"**16-12-204. (Effective ~~October 1, 2021~~ January 1, 2022) ~~Adult-use marijuana-infused products provider~~ Manufacturer -- requirements -- limitations -- fees.** (1) A person licensed as ~~an adult-use marijuana-infused products provider~~ a manufacturer shall:

(a) prepare ~~marijuana-infused~~ marijuana products at a ~~registered~~ licensed premises exclusively; and

(b) use equipment that is used exclusively for the manufacture and preparation of ~~marijuana-infused~~ marijuana products.

~~(2) An adult-use marijuana-infused products provider:~~

~~(a) may cultivate marijuana only for the purpose of making marijuana-infused products; and~~

~~(b) may not provide a consumer with marijuana in a form that may be used for smoking unless the adult-use marijuana-infused products provider is also a licensed adult-use provider.~~

~~(3)~~(2) All ~~registered~~ licensed premises on which ~~marijuana-infused~~ marijuana products are manufactured must meet any applicable standards set by a local board of health for a retail food establishment as defined in 50-50-102.

(3) An applicant for a manufacturer license shall demonstrate that the local government approval provisions contained in 16-12-301 have been satisfied in the jurisdiction where each proposed manufacturing facility is located.

(4) When evaluating an initial or renewal application, the department shall evaluate each proposed manufacturing facility for compliance with the provisions of 16-12-207 and 16-12-210.

~~(4)~~(5) ~~Marijuana-infused~~ Marijuana products may not be considered a food or drug for the purposes of Title 50, chapter 31.

(6) (a) The department shall charge a manufacturer license fee for an initial application and at each renewal. The license fee is based on the amount of concentrate produced at a manufacturing facility on a monthly basis. The annual fees for licensees are:

(i) $5,000 for each manufacturing facility that produces, on a monthly basis, less than 1 pound of concentrate and up to 10 pounds of concentrate;

(ii) $10,000 for each manufacturing facility that produces, on a monthly basis, between 10 pounds of

concentrate and 15 pounds of concentrate; and

(iii) $20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds or more of concentrate.

(b) The department may create additional fee levels as necessary.

(c) A manufacturer may apply to advance to the next licensing level in conjunction with a regular renewal application by demonstrating that its proposed additional or expanded manufacturing facility or facilities are located in a jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied.

(7) The department may adopt rules:

(a) for the inspection of proposed manufacturing facilities;

(b) for investigating the amount of concentrate produced at a manufacturing facility; and

(c) for investigating owners or applicants for a determination of beneficial ownership or financial interest."

Section 49. Section 16-12-206, MCA, is amended to read:

"**16-12-206. (Effective ~~October 1, 2021~~ January 1, 2022) Testing laboratories -- licensing inspections.** (1) A testing laboratory ~~licensed pursuant to Title 50, chapter 46, part 3, shall~~ may:

(a) measure the tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic acid content of marijuana and ~~marijuana-infused~~ marijuana products; and

(b) test marijuana and ~~marijuana-infused~~ marijuana products for pesticides, solvents, moisture levels, mold, mildew, and other contaminants. A testing laboratory may not transport samples to be tested unless it also possesses a marijuana transporter license.

~~(2) The analytical laboratory services provided by the department of agriculture pursuant to80-1-104may be used for the testing provided for in this section.~~

~~(3) A person with a financial interest in a licensed testing laboratory may not have a financial interest in any entity involved in the cultivation of marijuana or manufacture of a marijuana-infused product or marijuana concentrate for whom testing services are performed.~~

(2) A licensed testing laboratory shall employ a scientific director who is responsible for ensuring the

achievement and maintenance of quality standards of practice. A scientific director must have the following minimum qualifications:

(a) a doctorate in chemical or biological sciences from a college or university accredited by a national or regional certifying authority and a minimum of 2 years of postdegree laboratory experience; or

(b) a master's degree in chemical or biological sciences from a college or university accredited by a national or regional certifying authority and a minimum of 4 years of postdegree laboratory experience.

(3) All owners and employees of a testing laboratory shall submit fingerprints to the department to facilitate a fingerprint and background check as set forth in [section 2]. A testing laboratory may not be owned, operated, or staffed by a person who has been convicted of a felony offense.

(4) To qualify for licensure, a testing laboratory shall demonstrate that:

(a) staff members are proficient in operation of the laboratory equipment; and

(b) the laboratory:

(i) maintains the equipment and instrumentation required by rule;

(ii) has all equipment and instrumentation necessary to certify results that meet the quality assurance testing requirements established by rule, including the ability to certify results at the required level of sensitivity;

(iii) meets insurance and bonding requirements established by rule;

(iv) has the capacity and ability to serve rural areas of the state; and

(v) has passed a proficiency program approved by the state laboratory that demonstrates it is able to meet all testing requirements.

~~(4)~~(5) Except as provided in 16-12-209, a testing laboratory shall conduct tests of:

(a) samples of marijuana~~, marijuana concentrate, and marijuana-infused products submitted by adult-use providers and adult-use marijuana-infused products providers~~ and marijuana products submitted by cultivators and manufacturers pursuant to 16-12-209 and related administrative rules prior to sale of the marijuana or ~~marijuana-infused~~ marijuana products;

(b) samples of marijuana or ~~marijuana-infused~~ marijuana products collected by the department during inspections of ~~registered~~ licensed premises; and

(c) samples submitted by consumers or registered cardholders."

Section 50. Section 16-12-207, MCA, is amended to read:

"**16-12-207. (Effective ~~October 1, 2021~~ January 1, 2022) Licensing as privilege -- criteria.** (1) ~~An adult-use provider license, adult-use marijuana-infused products provider license, adult-use dispensary license, or endorsement for manufacturing~~ A cultivator license, manufacturer license, adult-use dispensary license, medical marijuana dispensary license, combined-use marijuana license, marijuana transporter license, or any other license authorized under this chapter is a privilege that the state may grant to an applicant and is not a right to which an applicant is entitled. In making a licensing decision, the department shall consider:

(a) the qualifications of the applicant; and

(b) the suitability of the proposed ~~registered~~ licensed premises, including but not limited to cultivation centers, dispensaries, and manufacturing facilities.

(2) The department may deny or revoke a license based on proof that the applicant made a ~~knowing and material~~ false statement in any part of the original application or renewal application.

(3) (a) The department ~~may deny an adult-use provider license, adult-use marijuana-infused products provider license, adult-use dispensary license, or endorsement for manufacturing~~ shall deny a cultivator license, manufacturer license, adult-use dispensary license, or medical marijuana license if the applicant's proposed ~~registered~~ licensed premises:

(i) is situated within a zone of a locality where an activity related to the use of marijuana conflicts with an ordinance, a certified copy of which has been filed with the department;~~.~~

~~(4) (a) The department may deny a license for an adult-use provider, adult-use marijuana-infused products provider, or adult-use dispensary or an endorsement for manufacturing if the applicant's proposed registered premises:~~

~~(i)~~(ii) is not approved by local building, health, or fire officials as provided for in this chapter; or

~~(ii)~~(iii) (A) except as provided in subsection (3)(a)(iii)(B), is within 500 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school or postsecondary school other than a commercially operated school, unless the locality ~~allows for a reduced~~ requires a greater distance. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises.

(B) Subsection (3)(a)(iii)(A) does not apply if the application is for license renewal and the licensed

premises was established before the church, synagogue, or other place of worship or school or postsecondary school existed on the same street.

(b) For the purposes of this subsection ~~(4)~~ (3), "school" and "postsecondary school" have the meanings provided in 20-5-402.

~~(5) An adult-use provider, adult-use marijuana-infused products provider, or adult-use dispensary licensee may operate at a shared location with a provider, marijuana-infused products provider, or dispensary as defined in 50-46-302 if the provider, marijuana-infused products provider, or dispensary is owned by the same person.~~

(4) A licensee may not sell or otherwise transfer marijuana or marijuana products through a drive-up window, except that a dispensary may hand-deliver marijuana or marijuana products to a registered cardholder in a vehicle that is parked immediately outside the subject dispensary.

(5) A marijuana business may not dispense or otherwise sell marijuana or marijuana products from a vending machine or allow such a vending machine to be installed at the interior or exterior of the premises.

(6) A marijuana business may not utilize the United States postal service or an alternative carrier other than a licensed marijuana transporter to transport, distribute, ship, or otherwise deliver marijuana or marijuana products.

(7) A marijuana business may not provide free marijuana or marijuana products or offer samples of marijuana or marijuana products.

(8) Marijuana or a marijuana product may not be given as a prize, premium, or consideration for a lottery, contest, game of chance, game of skill, or competition of any kind.

(9) (a) Except as provided in subsection (9)(c), an adult-use dispensary or medical marijuana dispensary must have a single, secured entrance for patrons and shall implement strict security measures to deter and prevent the theft of marijuana and unauthorized entrance in accordance with department rule.

(b) Except as provided in subsection (9)(c), a marijuana business that is not an adult-use dispensary or medical marijuana dispensary must implement security measures in accordance with department rule to deter and prevent the theft of marijuana and unauthorized entrance.

(c) The provisions of this subsection (9) do not supersede any state or local requirements relating to minimum numbers of points of entry or exit, or any state or local requirements relating to fire safety.

(10) Each marijuana business shall install a video monitoring system that must, at a minimum:

(a) allow for the transmission and storage, by digital means, of a video feed that displays the interior and exterior of the cannabis establishment; and

(b) be capable of being recorded as prescribed by the department.

(11) An adult-use dispensary or medical marijuana dispensary may not operate between the hours of 8 p.m. and 9 a.m. daily.

(12) A person under 21 years of age is not permitted inside a marijuana business unless the person is a registered cardholder."

Section 51. Section 16-12-208, MCA, is amended to read:

"**16-12-208. (Effective ~~October 1, 2021~~ January 1, 2022) Restrictions.** (1) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A cultivator or manufacturer may not cultivate marijuana or manufacture marijuana ~~concentrates or marijuana-infused~~ products in a manner that is visible from the street or other public area without the use of binoculars, aircraft, or other optical aids.

(2) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A cultivator or manufacturer may not cultivate, process, test, or store marijuana at any location other than the ~~registered~~ licensed premises approved by the department and within an enclosed area that is secured in a manner that prevents access by unauthorized persons.

~~(3) An adult-use provider or adult-use marijuana-infused products provider shall secure the provider's inventory and equipment during and after operating hours to deter and prevent theft of marijuana.~~

~~(4)~~(3) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A licensee shall make the ~~registered~~ licensed premises, books, and records available to the department for inspection and audit under 16-12-210 during normal business hours.

~~(5)~~(4) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A licensee may not allow a person under 18 years of age to volunteer or work for the licensee.

~~(6)~~(5) Edible ~~marijuana-infused~~ marijuana products manufactured as candy may not be sold in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marijuana.

~~(7)~~(6) (a) Marijuana or ~~a marijuana-infused product~~ marijuana products must be sold or otherwise transferred in resealable, child-resistant packaging that complies with federal child resistance standards and is designed to be significantly difficult for children under 5 years of age to open and not difficult for adults to use properly.

~~(b) Subsection (7)(a) does not apply to marijuana consumed on the premises where it is sold, if permitted by department rule.~~

(b) Packaging and outward labeling shall contain only a plain white label with black print that identifies the name of the product. All packaging and outward labeling must also comply with standards or criteria established by the department, including but not limited to:

(i) the size and type of permitted font;

(ii) allowable symbols and imagery; and

(iii) THC content or CBD content, health warning messages, and ingredients.

~~(8)~~(7) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A licensee may not sell or otherwise transfer ~~tobacco~~ hemp or alcohol from a ~~registered~~ licensed premises.

(8) (a) Prior to selling, offering for sale, or transferring marijuana or marijuana product that is for ultimate sale to a consumer or registered cardholder, a licensee or license applicant shall submit both a package and a label application, in a form prescribed by the department, to receive approval from the department.

(b) The initial submission shall be made electronically if required by the department. The licensee, license or applicant shall submit a physical prototype upon request by the department.

(c) If a license applicant submits packages and labels for preapproval, final determination for packages and labels may not be made until the applicant has been issued a license.

(d) A packaging and label application must include:

(i) a fee provided for in rule by the department;

(ii) documentation that the package has been certified as child-resistant by a federally qualified third-party child-resistant package testing firm;

(iii) a picture or rendering of and description of the item to be placed in the package; and

(iv) for label applications for inhalable marijuana products that contain nonmarijuana additives:

(A) the nonmarijuana additive's list of ingredients; and

(B) in a form and manner prescribed by the department, information regarding the additive or additives and the manufacturer of the additive or additives."

Section 52. Section 16-12-209, MCA, is amended to read:

"**16-12-209. (Effective ~~October 1, 2021~~ January 1, 2022) Testing of marijuana and ~~marijuana-infused~~ marijuana products.** (1) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A cultivator, manufacturer, adult-use dispensary, or medical marijuana dispensary may not sell marijuana or ~~marijuana-infused~~ marijuana products until the marijuana or marijuana products have been tested by a testing laboratory ~~or the department of agriculture~~ and meet the requirements of ~~50-46-326~~ this section. The licensee shall pay for the testing.

(2) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A licensee shall submit material that has been collected in accordance with a sampling protocol established by the state laboratory by rule. The protocol must address the division of marijuana and ~~marijuana-infused~~ marijuana products into batch sizes for testing. ~~Each batch must be tested in the following categories:~~

~~(a) flower;~~

~~(b) concentrate; and~~

~~(c) marijuana-infused product.~~

(3) The state laboratory shall ~~apply the same rules adopted pursuant to Title 50, chapter 46, part 3, regarding the types of tests, inspections, analysis, and certification that must be performed to ensure product safety and consumer protection to marijuana and marijuana products tested pursuant to this chapter~~ adopt rules regarding the types of tests that must be performed to ensure product safety and consumer protection. Rules must include but are not limited to testing for:

(a) the potency of the cannabinoids present; and

(b) the presence of contaminants.

(4) The testing laboratory shall conduct a visual inspection of each batch to determine the presence of levels of foreign matter, debris, insects, and visible mold.

(5) The state laboratory shall establish by rule the acceptable levels of moisture, pesticides, residual

solvents, mold, mildew, foreign matter, debris, insects, and other contaminants that marijuana products may contain.

(6) The testing laboratory shall:

(a) issue a certificate of analysis certifying the test results; and

(b) report the results to the seed-to-sale tracking system established pursuant to 16-12-105.

~~(4)~~(7) ~~An adult-use provider or adult-use marijuana-infused products provider~~ A licensee may request that material that has failed to pass the required tests be retested in accordance with the rules adopted by the state laboratory providing for retesting parameters and requirements.

~~(5)~~(8) Marijuana or a ~~marijuana-infused~~ marijuana product must include a label indicating that the marijuana or ~~marijuana-infused~~ marijuana product has been tested."

Section 53. Section 16-12-210, MCA, is amended to read:

"**16-12-210. (Effective ~~October 1, 2021~~ January 1, 2022) Inspections -- procedures -- prohibition on inspector affiliation with licensees.** (1) The department shall conduct unannounced inspections of ~~registered~~ licensed premises.

(2) (a) The department shall inspect annually each ~~registered~~ premises operated by a licensee.

(b) The department may collect samples during the inspection of a ~~registered~~ licensed premises and submit the samples to ~~all registered testing laboratories~~ a testing laboratory or the state laboratory for testing as provided by the department by rule.

(3) (a) Each ~~adult-use provider and adult-use marijuana-infused products provider~~ licensee shall keep a complete set of records necessary to show all transactions with consumers and registered cardholders. The records must be open for inspection by the department or state laboratory, as appropriate, and state or local law enforcement agencies ~~during normal business hours~~.

(b) Each testing laboratory shall keep:

(i) a complete set of records necessary to show all transactions with ~~adult-use providers and adult-use marijuana-infused products providers~~ a licensee; and

(ii) all data, including instrument raw data, pertaining to the testing of marijuana and ~~marijuana-infused~~ marijuana products.

(c) The records and data required under this subsection (3) must be open for inspection by the department and state or local law enforcement agencies ~~during normal business hours~~.

(d) The department may require ~~an adult-use provider, adult-use marijuana-infused products provider, or testing laboratory~~ a licensee to furnish information that the department considers necessary for the proper administration of this chapter.

(4) (a) ~~Registered~~ Each licensed premises, including any places of storage, where marijuana is cultivated, manufactured, sold, stored, or tested are subject to entry by the department or state or local law enforcement agencies for the purpose of inspection or investigation ~~during normal business hours~~.

(b) If any part of ~~the registered~~ a licensed premises consists of a locked area, the ~~provider or marijuana-infused products provider~~ licensee shall make the area available for inspection immediately upon request of the department or state or local law enforcement officials.

(5) If the department conducts an inspection because of a complaint against a licensee or ~~registered~~ licensed premises and does not find a violation of this chapter, the department shall give the licensee a copy of the complaint with the name of the complainant redacted.

(6) The department may not hire or contract with a person to be an inspector if the person, ~~has worked~~ during the previous 4 years, was or worked for a Montana business or facility operating under this chapter or ~~Title 50, chapter 46, part 3~~ a former medical marijuana licensee.

(7) In addition to any other penalties provided under this chapter, the department may revoke, suspend for up to 1 year, or refuse to renew a license or endorsement issued under this chapter if, upon inspection and subsequent notice to the licensee, the department finds that any of the following circumstances exist:

(a) a cause for which issuance of the license or endorsement could have been rejected had it been known to the department at the time of issuance;

(b) a violation of an administrative rule adopted to carry out the provisions of this chapter; or

(c) noncompliance with any provision of this chapter.

(8) The department may suspend or modify a license or endorsement without advance notice upon a finding that presents an immediate threat to the health, safety, or welfare of consumers, employees of the licensee, or members of the public. The department may establish by rule the applicable procedures for

securing or disposing of the inventory in such circumstances.

(9) (a) Review of a department action imposing a suspension, revocation, or other modification under this chapter must be conducted as a contested case hearing before the department's office of dispute resolution under the provisions of the Montana Administrative Procedure Act.

(b) A person may appeal any decision of the department of revenue concerning the issuance, rejection, suspension, or revocation of a license provided for by this chapter to the district court of the first judicial district.

(c) An appeal pursuant to subsection (9)(b) shall be made by filing a complaint setting forth the grounds for relief and the nature of relief demanded with the district court within 30 days following receipt of notice of the department's final decision.

(10) The department shall establish a training protocol to ensure uniform application and enforcement of the requirements of this chapter.

(11) The department shall report biennially to the ~~revenue~~ economic affairs interim committee concerning the results of inspections conducted under this section. The report must include the information required under 16-12-110."

Section 54. Section 16-12-211, MCA, is amended to read:

"**16-12-211. (Effective ~~October 1, 2021~~ January 1, 2022) Advertising prohibited.** (1) Persons with licenses may not advertise marijuana or ~~marijuana-related~~ marijuana products in any medium, including electronic media.

(2) A listing in a directory of businesses authorized under this chapter is not advertising for the purposes of this section.

(3) A licensee may have a website but may not:

(a) include prices on the website; or

(b) actively solicit consumers or out-of-state consumers through the website.

(4) The department shall adopt rules to clearly identify the activities that constitute advertising that are prohibited under this section."

Section 55. Section 16-12-301, MCA, is amended to read:

"**16-12-301. ~~(Effective October 1, 2021)~~ Local government authority to regulate -- opt-in requirement -- exemption for existing licensees.** (1) (a) Except as provided in subsection (1)(b), a marijuana business may not operate until:

(i) the category or categories of license that the marijuana business seeks has or have been approved by the local jurisdiction where the marijuana intends to operate as provided in subsection (3) or (4); and

(ii) the business is licensed by the department pursuant to this chapter.

(b) A former medical marijuana licensee that does not apply for licensure as an adult-use dispensary may operate in compliance with rules adopted by the department pursuant to 16-12-201(2) notwithstanding a local jurisdiction's failure to take action pursuant to subsections (3) or (4).

(c) For the purpose of this section, the marijuana business categories that must be approved by a local jurisdiction under subsections (3) or (4) before a business may operate are:

(i) cultivator;

(ii) manufacturer;

(iii) medical marijuana dispensary, except as provided in subsection (1)(b);

(iv) adult-use dispensary;

(v) combined-use marijuana licensee;

(vi) testing laboratory; and

(vii) marijuana transporter facility.

(2) (a) To protect the public health, safety, or welfare, a local government may by ordinance or ~~resolution~~ otherwise regulate ~~an adult-use provider or adult-use marijuana-infused products provider~~ a marijuana business that operates within the local government's jurisdictional area. The regulations may include but are not limited to inspections of ~~registered~~ licensed premises, including but not limited to indoor cultivation facilities, dispensaries, manufacturing facilities, and testing laboratories in order to ensure compliance with any public health, safety, and welfare requirements established by the department or the local government.

~~(b) A local government may not adopt ordinances or regulations that are unduly burdensome.~~

(b) Each license renewal period, an applicant for renewal shall obtain a certificate of good standing,

on a form provided by the department, from the locality and submit the certificate to the department.

(c) A former medical marijuana licensee that does not apply for licensure as an adult-use dispensary is exempt from complying with any local governmental regulations that are adopted under this subsection after [the effective date of this section] until its first license renewal date occurring after January 1, 2022, or the expiration of any grace period granted by the locality, whichever is later.

(3) (a) A county by ordinance or resolution may approve any or all of the marijuana business categories listed in subsection (1)(c) to operate within its jurisdiction.

(b) If a county has approved a category of marijuana business to operate within its borders by ordinance or resolution, the qualified voters of a municipality within that county may conduct an election as provided in subsection (4) to prohibit that type of marijuana business from operating within the municipality.

(c) If a county has not acted to approve or prohibit a category of marijuana business to operate within the county, the qualified voters of a municipality within that county may conduct an election as provided in subsection (4) to approve the operation of that business type to occur in its jurisdiction.

(d) A municipality may not approve the operation of a type of marijuana business to take place within its corporate boundaries if the county has, by resolution, ordinance, or election chosen not to approve that business type to operate within the county.

~~(2) The qualified electors of an incorporated municipality, county, or consolidated city-county may request an election on whether to prohibit by ordinance adult-use dispensaries from being located within the jurisdiction of the local government by filing a petition in accordance with 7-5-131 through 7-5-135 and 7-5-137.~~

(4) An election regarding whether to approve any or all of the marijuana business categories listed in subsection (1)(c) to be located within a local jurisdiction may be requested by filing a petition in accordance with 7-5-131 through 7-5-135 and 7-5-137 by:

(a) the qualified electors of a county; or

(b) the qualified electors of a municipality in accordance with subsection (3).

~~(3)~~(5) (a) An election held pursuant to this section must be called, conducted, counted, and canvassed in accordance with Title 13, chapter 1, part 4.

~~(b) Except as provided in subsection (3)(c), an election held pursuant to this section may not be held within 70 days before or after a primary, general, or regular local election.~~

~~(c)~~(b) An election pursuant to this section may be held in conjunction with a regular election of the governing body, general election, or a regular local or special election.

~~(4)~~(6) If the qualified electors of ~~an incorporated municipality, county, or consolidated city-county vote to prohibit adult-use dispensaries from being~~ a county vote to approve a type of marijuana business to be located in the jurisdiction, the governing body shall enter the ~~prohibition~~ approval into the records of the local government and notify the department of the election results.

~~(5)~~(7) (a) If an election is held pursuant to this section in a county that contains within its limits a municipality of more than 5,000 persons according to the most recent federal decennial census:

(i) it is not necessary for the registered qualified electors in the municipality to file a separate petition asking for a separate or different vote on the question of whether to ~~prohibit adult-use dispensaries~~ a category of marijuana business from being located in the municipality; and

(ii) the county shall conduct the election in a manner that separates the votes in the municipality from those in the remaining parts of the county.

(b) If a majority of the qualified electors in the county, including the qualified electors in the municipality, vote to ~~prohibit adult-use dispensaries from being~~ approve a category of marijuana business to be located in the county, the county may ~~not~~ allow ~~adult-use dispensaries~~ that category of marijuana business to operate in the county.

(c) (i) If a majority of the qualified electors in the municipality vote to ~~prohibit adult-use dispensaries from being~~ approve a category of marijuana business to be located in the municipality, the municipality may ~~not~~ allow ~~adult-use dispensaries~~ that type of marijuana business to operate in the municipality.

(ii) If a majority of the qualified electors in the municipality vote to prohibit a category of marijuana business from being located in the municipality, the municipality may not allow that type of marijuana business to operate in the municipality.

(d) Nothing contained in this subsection ~~(5)~~ (7) prevents any municipality from having a separate election under the terms of this section.

~~(6)~~(8) (a) ~~An incorporated municipality, county, or consolidated city-county~~ A county or municipality that has voted to ~~prohibit adult-use dispensaries from being~~ approve a category of marijuana business to be located in the jurisdiction may vote to ~~discontinue the prohibition and to allow the~~ prohibit the previously

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~~prohibited~~ approved operations within the ~~incorporated municipality, county, or consolidated city-county~~ jurisdiction.

(b) A vote overturning ~~a prohibition on operation of adult-use dispensaries~~ the approval of a category of marijuana business is effective on the 90th day after the local election is held.

~~(7) A local government may temporarily prohibit retail sales regulated under this chapter from being located within its jurisdiction through local ordinance until an election can be held pursuant to this section.~~

~~(8)~~(9) A local government may not prohibit the transportation of marijuana within or through its jurisdiction on public roads by any person licensed to do so by the department or as otherwise allowed by this chapter."

Section 56. Section 16-12-302, MCA, is amended to read:

"**16-12-302. (Effective ~~October 1, 2021~~ January 1, 2022) Fraudulent representation -- penalties.** (1) In addition to any other penalties provided by law, an individual who fraudulently represents to a law enforcement official that the individual is ~~an adult-use provider or an adult-use marijuana-infused products provider~~ a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, testing laboratory, marijuana transporter, or has a marijuana worker permit is guilty of a civil fine not to exceed $1,000.

(2) An individual convicted under this section may not be licensed under this chapter ~~as an adult-use provider or adult-use marijuana-infused products provider under 16-12-203~~."

Section 57. Section 17-6-606, MCA, is amended to read:

"**17-6-606. Tobacco settlement and healing and ending addiction through recovery and treatment (HEART) accounts -- purpose -- uses.** (1) The purpose of this section is to dedicate a portion of the tobacco settlement proceeds and the taxes collected under Title 15, chapter 64, part 1, and Title 15, chapter 12, part 4, to fund statewide programs to improve the continuum of care for:

(a) tobacco ~~disease~~ cessation and prevention;

(b) substance use disorder prevention;

(c) mental health promotion; and

(d) crisis, treatment, and recovery services for substance use and mental health disorders.

(2) The services must be designed to:

(a) discourage children from starting use of tobacco;

(b) assist adults in quitting use of tobacco; ~~and~~

(c) provide funds for the children's health insurance program;

(d) increase the number of individuals choosing treatment over incarceration;

(e) improve access to, utilization of, and engagement and retention in prevention, treatment, and recovery support services;

(f) expand the availability of community-based services that reflect best practices or are evidence-based;

(g) leverage additional federal funds when available for the healthy Montana kids plan provided for in Title 53, chapter 4, part 11, and the medicaid program provided for in Title 53, chapter 6, for the purposes of this section;

(h) provide funding for programs and services that are described in subsections (2)(d) through (2)(f) and provided on an Indian reservation located in this state; and

(i) provide funding for grants and services to tribes for use in accordance with this section.

~~(2)~~(3) (a) ~~An~~ The healing and ending addiction through recovery and treatment (HEART) account consists of:

(i) an amount equal to 32% of the total yearly tobacco settlement proceeds received after June 30, 2003~~, must be deposited in a state special revenue account~~; and

(ii) money transferred into the account as provided in 16-12-111.

(b) ~~Subject to subsection (5), the funds referred to in~~ Money in the account provided for in this subsection (3) may be used only for funding statewide programs ~~for tobacco disease prevention designed to prevent children from starting tobacco use and to help adults who want to quit tobacco use~~ in accordance with subsections (2)(a), (2)(b), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), and (2)(i).

(c) An amount not to exceed $500,000, including eligible federal matching sources when applicable, must be used to provide funding for grants and services to tribes for tobacco prevention and cessation, substance use disorder prevention, mental health promotion, and substance use disorder and mental health crisis, treatment, and recovery services.

(d) The department of public health and human services shall manage the ~~tobacco disease prevention~~ programs funded by the special revenue account and shall adopt rules to implement the programs. In adopting rules for tobacco prevention programs, the department shall consider the standards contained in Best Practices for Comprehensive Tobacco Control Programs--~~August 1999~~ 2014 or its successor document, published by the U.S. department of health and human services, centers for disease control and prevention.

~~(3)~~(4) An amount equal to 17% of the total yearly tobacco settlement proceeds received after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection (5), the funds referred to in this subsection may be used only for matching funds to secure the maximum amount of federal funds for the Children's Health Insurance Program Act provided for in Title 53, chapter 4, part 10.

~~(4)~~(5) ~~Funds~~ Except for one-time settlements and transfers, including transfers from the special revenue account provided for in 16-12-111, tobacco settlement funds deposited in a state special revenue account~~, as provided in subsection (2) or (3),~~ under this section that are not appropriated within 2 years after the date of deposit must be transferred to the trust fund.

~~(5)~~(6) The legislature shall appropriate money from the state special revenue accounts provided for in this section for programs ~~for tobacco disease prevention,~~ for:

(a) the programs referred to in the subsection establishing ~~the~~ each account~~,~~; and

(b) ~~for funding~~ the activities of the tobacco prevention advisory board.

~~(6)~~(7) Programs funded under this section that are private in nature may be funded through contracted services."

Section 58. Section 17-6-610, MCA, is amended to read:

"**17-6-610. Tobacco prevention advisory board.** (1) There is a tobacco prevention advisory board. The board consists of 15 members appointed by the director of the department of public health and human services. Except for the initial appointments, each board member shall serve a 3-year term and is subject to reappointment for one succeeding term. The director shall appoint members to staggered terms, with five members serving an initial term of 1, 2, or 3 years. The initial members appointed shall draw lots to determine their term of office. The board shall terminate when tobacco settlement funds are no longer received by the state. The board shall meet at least one time each year, with the date and frequency of meetings to be

determined by its presiding officer. Health care professionals and individuals are eligible to serve on the board. A board member may not have been paid by the tobacco products industry during the 10-year period preceding appointment.

(2) Members of the board are not entitled to compensation for their services, but are entitled to a mileage allowance, as provided in 2-18-503, and expenses as provided in 2-18-501 and 2-18-502.

(3) (a) ~~The~~ Except as provided in subsection (3)(b), the board shall furnish advice, gather information, and perform other activities regarding the state special revenue accounts established pursuant to 17-6-606. The board may make recommendations for the use of appropriations from the state special revenue accounts.

(b) The board's activities under this subsection (3) do not extend to activities associated with the services funded by money transferred in accordance with 16-12-111 into the special revenue account provided for in 17-6-606(3).

(4) The board is attached to the department of public health and human services for administrative purposes, and the department shall provide staff support to the board."

Section 59. Section 18-7-101, MCA, is amended to read:

"**18-7-101. Power to contract for printing -- exceptions.** (1) Except as provided in 1-11-301 ~~and 50-46-303~~, 16-12-104, and [section ~~16~~ 11], the department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

(4) The provisions of this chapter do not apply to the state compensation insurance fund for purposes of external marketing or educational materials."

Section 60. Section 37-1-136, MCA, is amended to read:

"**37-1-136. Disciplinary authority of boards -- injunctions.** (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with ~~Title 50, chapter 46~~ [sections ~~14 through 28~~ 9 through 23].

(5) Rules adopted under subsection (1) must provide for the provision of public notice as required by 37-1-311."

Section 61. Section 37-1-316, MCA, is amended to read:

"**37-1-316. Unprofessional conduct.** The following is unprofessional conduct for a licensee or license applicant governed by this part:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to

licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;

(11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(13) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing

evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(15) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(16) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(17) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

(19) the sole use of any electronic means, including teleconferencing, to obtain the information required for the written certification and accompanying statements used to apply for a registry identification card pursuant to ~~Title 50, chapter 46, part 3~~ [sections ~~14 through 28~~ 9 through 23]."

Section 62. Section 37-3-203, MCA, is amended to read:

"**37-3-203. Powers and duties -- rulemaking authority.** (1) The board may:

(a) adopt rules necessary or proper to carry out the requirements in Title 37, chapter 3, parts 1 through 4, and of chapters covering podiatry, acupuncture, physician assistants, nutritionists, and emergency care providers as set forth in Title 37, chapters 6, 13, 20, and 25, and 50-6-203, respectively. Rules adopted for emergency care providers with an endorsement to provide community-integrated health care must address the scope of practice, competency requirements, and educational requirements.

(b) hold hearings and take evidence in matters relating to the exercise and performance of the powers

and duties vested in the board;

(c) aid the county attorneys of this state in the enforcement of parts 1 through 4 and 8 of this chapter as well as Title 37, chapters 6, 13, 20, and 25, and Title 50, chapter 6, regarding emergency care providers licensed by the board. The board also may assist the county attorneys of this state in the prosecution of persons, firms, associations, or corporations charged with violations of the provisions listed in this subsection (1)(c).

(d) review certifications of disability and determinations of eligibility for a permit to hunt from a vehicle as provided in 87-2-803(11); and

(e) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

(2) (a) The board shall establish a medical assistance program to assist and rehabilitate licensees who are subject to the jurisdiction of the board and who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental illness or chronic physical illness.

(b) The board shall ensure that a licensee who is required or volunteers to participate in the medical assistance program as a condition of continued licensure or reinstatement of licensure must be allowed to enroll in a qualified medical assistance program within this state and may not require a licensee to enroll in a qualified treatment program outside the state unless the board finds that there is no qualified treatment program in this state.

(3) (a) The board shall report annually on the number and types of complaints it has received involving physician practices in providing written certification, as defined in ~~50-46-302~~ [section ~~15~~ 10], for the use of marijuana for a debilitating medical condition provided for in ~~Title 50, chapter 46~~ [sections ~~14 through 28~~ 9 through 23]. The report must contain:

(i) the number of complaints received by the board pursuant to 37-1-308;

(ii) the number of complaints for which a reasonable cause determination was made pursuant to 37-1-307;

(iii) the general nature of the complaints;

(iv) the number of investigations conducted into physician practices in providing written certification;

and

(v) the number of physicians disciplined by the board for their practices in providing written certification for the use of marijuana for a debilitating medical condition.

(b) Except as provided in subsection (3)(c), the report may not contain individual identifying information regarding the physicians about whom the board received complaints.

(c) For each physician against whom the board takes disciplinary action related to the physician's practices in providing written certification for the use of marijuana for a debilitating medical condition, the report must include:

(i) the name of the physician;

(ii) the general results of the investigation of the physician's practices; and

(iii) the disciplinary action taken against the physician.

(d) The board shall provide the report to the ~~children, families, health, and human services~~ economic affairs interim committee by August 1 of each year and shall make a copy of the report available on the board's website.

(4) The board may enter into agreements with other states for the purposes of mutual recognition of licensing standards and licensing of physicians and emergency care providers from other states under the terms of a mutual recognition agreement."

Section 63. Section 39-2-210, MCA, is amended to read:

"**39-2-210. Limitation on adverse action.** Except as provided in ~~50-46-320~~ 16-12-108, no adverse action, including followup testing, may be taken by the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed."

Section 64. Section 39-2-313, MCA, is amended to read:

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

or enjoyed and includes food, beverages, ~~and~~ tobacco, and marijuana.

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

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

(a) use of a lawful product, ~~including the use of marijuana for a debilitating medical condition as defined in 50-46-302,~~ that:

(i) affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees; or

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

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

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

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

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

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

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

(c) the distinctions in the type or price of coverage are not used to expand, limit, or curtail the rights or

liabilities of a party in a civil cause of action."

Section 65. Section 39-71-407, MCA, is amended to read:

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

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

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

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

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

(i) a claimed injury has occurred; or

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

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

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

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

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

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

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

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

(6) (a) An employee who has received written certification, as defined in ~~50-46-302~~ [section ~~15~~ 35], from a physician for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

(b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of marijuana for a debilitating medical condition, as defined in ~~50-46-302~~ [section ~~15~~ 35], is the major contributing cause of the injury or occupational disease.

(c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs associated with the use of marijuana for a debilitating medical condition, as defined in ~~50-46-302~~ [section ~~15~~ 35].

(d) In an accepted liability claim, the benefits payable under this chapter may not be increased or enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in ~~50-46-302~~ [section ~~15~~ 35]. An insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana for a debilitating medical condition.

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

drug.

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

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

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

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

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

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

(a) is established by objective medical findings; and

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

(13) When compensation is payable for an occupational disease or a presumptive occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously

exposed to the hazard of the disease.

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

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

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

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

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

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

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

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

(b) engaged in a social or recreational activity, regardless of whether the employer pays for any portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity or whose

presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b), "requested" means the employer asked the employee to assume duties for the activity so that the employee's presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

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

(i) a claimed injury has occurred; or

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

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

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

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

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

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

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

(6) (a) An employee who has received written certification, as defined in ~~50-46-302~~ [section ~~15~~ 35], from a physician for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

(b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of marijuana for a debilitating medical condition, as defined in ~~50-46-302~~ [section ~~15~~ 35], is the major

contributing cause of the injury or occupational disease.

(c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs associated with the use of marijuana for a debilitating medical condition, as defined in ~~50-46-302~~ [section ~~15~~ 35].

(d) In an accepted liability claim, the benefits payable under this chapter may not be increased or enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in ~~50-46-302~~ [section ~~15~~ 35]. An insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana for a debilitating medical condition.

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

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

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

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

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

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

(a) is established by objective medical findings; and

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

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

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

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

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

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

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

Section 66. Section 41-5-216, MCA, is amended to read:

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

termination of the extended jurisdiction.

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

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

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

(5) After formal and informal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

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

(b) adult probation and parole staff preparing a presentence report on an adult with an existing sealed youth court record.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the office of court administrator and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation.

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

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

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

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

(b) The informal youth court records are confidential and may be shared only with those persons and agencies listed in 41-5-215(2).

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

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

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

(8) Nothing in this section prohibits the sharing of formal or informal youth court records within the juvenile probation management information system to a person or agency listed in 41-5-215(2).

(9) This section does not prohibit the sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). A person or agency receiving the youth court record shall destroy the record after it has fulfilled its purpose.

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

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003 and studies conducted between individuals and agencies listed in 41-5-215(2).

(12) This section does not prohibit the office of court administrator, upon written request from the department of ~~public health and human services~~ revenue, from confirming whether a person applying for a

registry identification card pursuant to ~~50-46-307~~ [section ~~16~~ 11] or a license pursuant to ~~50-46-308~~ 16-12-203 is currently under youth court supervision."

Section 67. Section 44-4-1205, MCA, is amended to read:

"**44-4-1205. Authority of court to order participation in sobriety and drug monitoring program -- probationary license -- imposition of conditions.** (1) (a) Any court or agency utilizing the sobriety program may stay any sanctions that it imposed against an offender while the offender is in compliance with the sobriety program.

(b) If an individual convicted of the offense of aggravated driving under the influence in violation of 61-8-465, a second or subsequent offense of driving under the influence in violation of 61-8-401 or 61-8-411, or a second or subsequent offense of driving with excessive alcohol concentration in violation of 61-8-406 has been required to participate in the sobriety program, the court may, upon the individual's obtaining proof of insurance pursuant to 61-6-301, notify the department that as a participant in the sobriety program, the individual is eligible for a restricted probationary driver's license pursuant to 61-2-302, notwithstanding the requirements of 61-5-208 that an individual is required to complete a certain portion of a suspension period before a probationary license may be issued.

(c) If the individual fails to comply with the requirements of the sobriety program, the court may notify the department of the individual's noncompliance and direct the department to withdraw the individual's probationary driver's license and reinstate the remainder of the suspension period provided in 61-5-208.

(2) Upon an offender's participation in the sobriety program and payment of the fees required by 44-4-1204:

(a) the court may condition any bond or pretrial release for an individual charged with a violation of 61-8-465, a second or subsequent violation of 61-8-401, ~~or~~ 61-8-406, 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(b) the court may condition the granting of a suspended execution of sentence or probation for an individual convicted of a violation of 61-8-465, a second or subsequent violation of 61-8-401 or 61-8-406, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse

of alcohol or dangerous drugs was a contributing factor in the commission of the crime;

(c) the board of pardons and parole may condition parole for a violation of 61-8-465, a second or subsequent violation of 61-8-401, ~~or~~ 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; or

(d) the department of corrections may establish conditions for conditional release for a violation of 61-8-465, a second or subsequent violation of 61-8-401, ~~or~~ 61-8-406, or 61-8-411, or a second or subsequent violation of any other statute that imposes a jail penalty of 6 months or more if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.

(3) An entity referred to in subsections (2)(a) through (2)(d) may condition any bond or pretrial release, suspended execution of sentence, probation, parole, or conditional release as provided in those subsections for an individual charged with or convicted of a violation of any statute involving domestic abuse or the abuse or neglect of a minor if the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime regardless of whether the charge or conviction was for a first, second, or subsequent violation of the statute.

(4) A person is eligible to participate in and a court may compel a person to participate in a sobriety program if the person:

(a) is charged with violating 61-8-465; or

(b) (i) is charged with or has been convicted of violating 61-8-401, ~~or~~ 61-8-406, or 61-8-411; and

(ii) at any time in the 10 years preceding the date of the current charge or conviction:

(A) has been convicted in this state of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465;

(B) has been convicted of a violation of a statute or regulation in another state or on a federally recognized Indian reservation that is similar to 61-8-401, 61-8-406, or 61-8-465; or

(C) has forfeited bail or collateral deposited to secure the defendant's appearance in court in this state, in another state, or on a federally recognized Indian reservation for a charge of violating 61-8-401, 61-8-406, 61-8-411, 61-8-465, or a similar statute or regulation and the forfeiture has not been vacated.

(5) As used in this section, "conviction" has the meaning provided in 45-2-101."

Section 68. Section 45-9-101, MCA, is amended to read:

"**45-9-101. Criminal distribution of dangerous drugs.** (1) Except as provided in Title 16, chapter 12, ~~or Title 50, chapter 46,~~ a person commits the offense of criminal distribution of dangerous drugs if the person sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of dangerous drugs involving giving away or sharing any dangerous drug, as defined in 50-32-101, shall be sentenced as provided in 45-9-102.

(3) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (1), (2), or (4) shall be imprisoned in the state prison for a term not to exceed 25 years or be fined an amount of not more than $50,000, or both.

(4) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) For a first offense, the person shall be imprisoned in the state prison for a term not to exceed 40 years and may be fined not more than $50,000.

(b) For a second or subsequent offense, the person shall be imprisoned in the state prison for a term not to exceed life and may be fined not more than $50,000.

(5) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 69. Section 45-9-102, MCA, is amended to read:

"**45-9-102. Criminal possession of dangerous drugs.** (1) Except as provided in Title 16, chapter 12, <u>or</u> 50-32-609, ~~or Title 50, chapter 46,~~ a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101, [in an amount] greater than permitted or for which a penalty is not specified under Title 16, chapter 12.

(2) A person convicted of criminal possession of dangerous drugs shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $5,000, or both.

(3) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(4) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 70. Section 45-9-103, MCA, is amended to read:

"**45-9-103. Criminal possession with intent to distribute.** (1) Except as provided in Title 16, chapter 12, ~~or Title 50, chapter 46,~~ a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101 [in an amount] greater than permitted or for which a penalty is not specified under Title 16, chapter 12.

(2) A person convicted of criminal possession with intent to distribute shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(3) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 71. Section 45-9-110, MCA, is amended to read:

"**45-9-110. Criminal production or manufacture of dangerous drugs.** (1) Except as provided in Title 16, chapter 12, ~~or Title 50, chapter 46,~~ a person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of dangerous drugs, as defined in 50-32-101, shall be imprisoned in the state prison for a term of not more than 25 years and may be fined an amount not to exceed $50,000.

(3) A person convicted of production of marijuana or tetrahydrocannabinol in an amount greater than permitted or for which a penalty is not specified under Title 16, chapter 12, ~~or Title 50, chapter 46,~~ or manufacture without the appropriate license ~~and endorsement~~ pursuant to Title 16, chapter 12, ~~or Title 50, chapter 46,~~ shall be imprisoned in the state prison for a term of not more than 5 years and may be fined an amount not to exceed $5,000, except that if the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for a term of not more than 25 years and may be fined an amount not to exceed $50,000. "Weight" means the weight of the dry plant and includes the leaves

and stem structure but does not include the root structure.

(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 72. Section 45-9-127, MCA, is amended to read:

"**45-9-127. Carrying dangerous drugs on train -- penalty.** (1) Except as provided in Title 16, chapter 12, ~~or Title 50, chapter 46,~~ a person commits the offense of carrying dangerous drugs on a train in this state if the person is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

(2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties provided in 45-9-102."

Section 73. Section 45-9-203, MCA, is amended to read:

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

(2) If a person with a registry identification card or license issued pursuant to ~~50-46-307~~ [section ~~16~~ 11] or ~~50-46-308~~ 16-12-203 is convicted of an offense under this chapter, the court shall:

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

(b) notify the department of ~~public health and human services~~ revenue of the conviction in order for the department to carry out its duties under ~~50-46-330~~ [section ~~23~~ 18] or 16-12-109."

Section 74. Section 45-10-103, MCA, is amended to read:

"**45-10-103. Criminal possession of drug paraphernalia.** Except as provided in Title 16, chapter 12, or 50-32-609, ~~or Title 50, chapter 46,~~ it is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon

conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than $500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

Section 75. Section 45-10-107, MCA, is amended to read:

"**45-10-107. Exemptions.** The provisions of this part do not apply to:

(1) practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice;

~~(2) persons acting in compliance with Title 50, chapter 46;~~

~~(3)~~(2) persons acting in compliance with Title 16, chapter 12; or

~~(4)~~(3) persons acting as employees or volunteers of an organization, including a nonprofit community-based organization, local health department, or tribal health department, that provides needle and syringe exchange services to prevent and reduce the transmission of communicable diseases."

Section 76. Section 46-18-202, MCA, is amended to read:

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

(a) prohibition of the offender's holding public office;

(b) prohibition of the offender's owning or carrying a dangerous weapon;

(c) restrictions on the offender's freedom of association;

(d) restrictions on the offender's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

(f) a requirement that the offender surrender any registry identification card issued under [section ~~16~~ 11] or license issued under ~~50-46-303~~ 16-12-203;

(g) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

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

(3) If a sentencing judge requires an offender to surrender a registry identification card issued under [section ~~16~~ 11] or license issued under ~~50-46-303~~ 16-12-203, the court shall return the card or license to the department of ~~public health and human services~~ revenue and provide the department with information on the offender's sentence. The department shall revoke the card for the duration of the sentence and shall return the card if the offender successfully completes the terms of the sentence before the expiration date listed on the card."

Section 77. Section 50-46-302, MCA, is amended to read:

"**50-46-302. Definitions.** As used in this part, the following definitions apply:

(1) "Canopy" means the total amount of square footage dedicated to live plant production at a registered premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

(2) "Chemical manufacturing" means the production of marijuana concentrate.

(3) "Correctional facility or program" means a facility or program that is described in 53-1-202 and to which an individual may be ordered by any court of competent jurisdiction.

(4) "Debilitating medical condition" means:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician;

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

(i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) admittance into hospice care in accordance with rules adopted by the department; or

(k) posttraumatic stress disorder.

(5) "Department" means the department of ~~public health and human services~~ revenue provided for in ~~2-15-2201~~ 2-15-1301.

(6) "Dispensary" means a registered premises from which a provider or marijuana-infused products provider is approved by the department to dispense marijuana or marijuana-infused products to a registered cardholder.

(7) (a) "Employee" means an individual employed to do something for the benefit of an employer.

(b) The term includes a manager, agent, or director of a partnership, association, company, corporation, limited liability company, or organization.

(c) The term does not include a third party with whom a licensee has a contractual relationship.

(8) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly through a business, an investment, or a spouse, parent, or child relationship, to 1% or more of the net profits or net worth of the entity in which the interest is held.

(9) "Local government" means a county, a consolidated government, or an incorporated city or town.

(10) "Marijuana" has the meaning provided in 50-32-101.

(11) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.

(12) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, and byproducts of the marijuana plant, including but not limited to marijuana concentrates and marijuana-infused products.

(13) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by a registered cardholder by a means other than smoking.

(b) The term includes but is not limited to edible products, ointments, and tinctures.

(14) (a) "Marijuana-infused products provider" means a person licensed by the department to manufacture and provide marijuana-infused products for a registered cardholder.

(b) The term does not include the cardholder's treating or referral physician.

(15) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

(16) "Paraphernalia" has the meaning provided in 45-10-101.

(17) "Person" means an individual, partnership, association, company, corporation, limited liability company, or organization.

(18) (a) "Provider" means a person licensed by the department to assist a registered cardholder as allowed under this part.

(b) The term does not include a cardholder's treating physician or referral physician.

(19) "Referral physician" means an individual who:

(a) is licensed under Title 37, chapter 3; and

(b) is the physician to whom a patient's treating physician has referred the patient for physical examination and medical assessment.

(20) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(21) "Registered premises" means the location at which a provider or marijuana-infused products provider:

(a) has indicated that marijuana will be cultivated, chemical manufacturing will occur, or marijuana-infused products will be manufactured for registered cardholders; or

(b) has established a dispensary for sale of marijuana or marijuana-infused products to registered cardholders.

(22) "Registry identification card" means a document issued by the department pursuant to 50-46-303 that identifies an individual as a registered cardholder.

(23) (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of this part if the individual:

(i) claims residence in another state or country for any purpose; or

(ii) is an absentee property owner paying property tax on property in Montana.

(24) "Second degree of kinship by blood or marriage" means a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, stepdaughter, stepgrandparent, or stepgrandchild.

(25) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(26) "Standard of care" means, at a minimum, the following activities when undertaken in person or through the use of telemedicine by a patient's treating physician or referral physician if the treating physician or referral physician is providing written certification for a patient with a debilitating medical condition:

(a) obtaining the patient's medical history;

(b) performing a relevant and necessary physical examination;

(c) reviewing prior treatment and treatment response for the debilitating medical condition;

(d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating medical condition;

(e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;

(f) monitoring the response to treatment and possible adverse effects; and

(g) creating and maintaining patient records that remain with the physician.

(27) "State laboratory" means the laboratory operated by the department to conduct environmental analyses.

(28) "Telemedicine" has the meaning provided in 33-22-138.

(29) "Testing laboratory" means a qualified person, licensed by the department, who meets the requirements of 50-46-311 and:

(a) provides testing of representative samples of marijuana and marijuana-infused products; and

(b) provides information regarding the chemical composition, the potency of a sample, and the presence of molds, pesticides, or other contaminants in a sample.

(30) "Treating physician" means an individual who:

(a) is licensed under Title 37, chapter 3; and

(b) has a bona fide professional relationship with the individual applying to be a registered cardholder.

(31) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any marijuana derivatives that are appropriate for the use of marijuana by an individual with a debilitating medical condition.

(b) The term does not include the seeds, stalks, and roots of the plant.

(32) "Written certification" means a statement signed by a treating physician or referral physician that meets the requirements of 50-46-310 and is provided in a manner that meets the standard of care."

Section 78. Section 50-46-303, MCA, is amended to read:

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

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

(b) licenses:

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

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

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

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

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

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

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

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

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

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

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

(ii) state the name, address, and date of birth of the registered cardholder;

(iii) indicate whether the cardholder is obtaining marijuana and marijuana-infused products through the system of licensed providers and marijuana-infused products providers;

(iv) indicate whether a provider or marijuana-infused products provider has an endorsement for chemical manufacturing;

(v) state the date of issuance and the expiration date of the registry identification card or license;

(vi) contain a unique identification number; and

(vii) contain other information that the department may specify by rule.

(b) Except as provided in subsection (4)(c), in addition to complying with subsection (4)(a), registry identification cards issued pursuant to this part must:

(i) include a picture of the registered cardholder; and

(ii) be capable of being used to track registered cardholder purchases.

(c) (i) The department shall issue temporary registry identification cards upon receipt of an application. The cards are valid for 60 days and are exempt from the requirements of subsection (4)(b). Printing of the temporary identification cards is exempt from the provisions of Title 18, chapter 7.

(ii) The cards may be issued before an applicant's payment of the fee has cleared. The department shall cancel the temporary card after 60 days and may not issue a permanent card until the fee is paid.

(5) (a) The department or state laboratory, as applicable, shall review the information contained in an application or renewal submitted pursuant to this part and shall approve or deny an application or renewal within 30 days of receiving the application or renewal and all related application materials.

(b) If the department fails to act on a completed application within 30 days of receipt, the department shall:

(i) refund the fee paid by an applicant for a registry identification card;

(ii) reduce the cost of the licensing fee for a new applicant for licensure or for a licensee seeking renewal of a license by 5% each week that the application is pending; and

(iii) if a licensee is unable to operate because a license renewal application has not been acted on, reimburse the licensee 50% of the gross sales the licensee reported in the most recent quarter for the purpose of the tax provided for in 15-64-102.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 79. Section 50-46-307, MCA, is amended to read:

"**50-46-307. Individuals with debilitating medical conditions -- requirements -- minors -- limitations.** (1) Except as provided in subsections (2) through (5), the department shall issue a registry identification card to an individual with a debilitating medical condition who submits the following, in accordance with department rules:

(a) an application on a form prescribed by the department;

(b) an application fee or a renewal fee;

(c) the individual's name, street address, and date of birth;

(d) proof of Montana residency;

~~(e) a statement that the individual will be cultivating marijuana and manufacturing marijuana-infused products for the individual's use or will be obtaining marijuana or marijuana-infused products through the system of licensed providers and marijuana-infused products providers;~~

~~(f)~~(e) a statement, on a form prescribed by the department, that the individual will not divert to any other individual the marijuana or marijuana-infused products that the individual ~~cultivates, manufactures, or~~ obtains through the system of licensed providers and marijuana-infused products providers for the individual's debilitating medical condition;

~~(g)~~(f) the name of the individual's treating physician or referral physician and the street address and telephone number of the physician's office;

~~(h)~~(g) the street address where the individual is cultivating marijuana or manufacturing marijuana-infused products if the individual is cultivating marijuana or manufacturing marijuana-infused products for the individual's own use; and

~~(i)~~(h) the written certification and accompanying statements from the individual's treating physician or referral physician as required pursuant to 50-46-310.

(2) The department shall issue a registry identification card to a minor if the materials required under subsection (1) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions:

(a) provides proof of legal guardianship and responsibility for health care decisions if the individual is submitting an application as the minor's legal guardian with responsibility for health care decisions; and

(b) signs and submits a written statement that:

(i) the minor's treating physician or referral physician has explained to the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the use of marijuana;

(ii) indicates whether the parent or legal guardian will be obtaining marijuana or marijuana-infused products for the minor through the system of licensed providers and marijuana-infused products providers; and

(iii) the minor's custodial parent or legal guardian with responsibility for health care decisions:

(A) consents to the use of marijuana by the minor;

(B) agrees to control the acquisition of marijuana and the dosage and frequency of the use of marijuana by the minor;

(C) agrees that the minor will use only marijuana-infused products and will not smoke marijuana;

(c) if the parent or guardian will be serving as the minor's provider, undergoes background checks in accordance with subsection (3). The parent or legal guardian shall pay the costs of the background check and may not obtain a license as a marijuana-infused products provider if the parent or legal guardian does not meet the requirements of 50-46-308.

(d) pledges, on a form prescribed by the department, not to divert to any individual any marijuana cultivated or obtained for the minor's use in a marijuana-infused product.

(3) A parent serving as a minor's provider shall submit fingerprints to facilitate a fingerprint and background check by the department of justice and federal bureau of investigation upon the minor's initial application for a registry identification card and every 3 years after that. The department shall conduct a name-based background check in years when a fingerprint background check is not required.

(4) An application for a registry identification card for a minor must be accompanied by the written certification and accompanying statements required pursuant to 50-46-310 from a second physician in addition to the minor's treating physician or referral physician.

(5) An individual may not be a registered cardholder if the individual is in the custody of or under the supervision of the department of corrections or a youth court.

~~(6) A registered cardholder who elects to obtain marijuana or marijuana-infused products through the system of licensed providers and marijuana-infused products providers may not cultivate marijuana or~~

~~manufacture marijuana-infused products for the cardholder's use unless the registered cardholder is a licensed provider or marijuana-infused products provider.~~

~~(7) A registered cardholder may cultivate marijuana and manufacture marijuana-infused products as allowed under 50-46-319 only:~~

~~(a) at a property that is owned by the cardholder; or~~

~~(b) with written permission of the property owner, at a property that is rented or leased by the cardholder.~~

~~(8) No portion of the property used for cultivation of marijuana and manufacture of marijuana-infused products for use by the registered cardholder may be shared with or rented or leased to a provider, a marijuana-infused products provider, or a registered cardholder unless the property is owned, rented, or leased by cardholders who are related to each other by the second degree of kinship by blood or marriage.~~"

Section 80. Section 50-46-319, MCA, is amended to read:

"**50-46-319. Legal protections -- allowable amounts.** (1) (a) A registered cardholder ~~who has elected to obtain marijuana and marijuana-infused products through the system of licensed providers and marijuana-infused products providers~~ may:

(i) possess up to 1 ounce of usable marijuana; and

(ii) purchase a maximum of 5 ounces of usable marijuana a month and no more than 1 ounce of usable marijuana a day.

~~(b) (i) A registered cardholder who has elected not to use the system of licensed providers and marijuana-infused products providers may possess up to 4 mature plants, 4 seedlings, and the amount of usable marijuana allowed by the department by rule.~~

~~(ii) If two or more registered cardholders share a residence and have elected not to use the system of licensed providers and marijuana-infused products providers, the cardholders may have a maximum of 8 mature plants, 8 seedlings, and the amount of usable marijuana allowed by the department by rule. The limits in this subsection (1)(b)(ii) apply regardless of the location of the plants and seedlings.~~

~~(iii) A registered cardholder who possesses mature plants or seedlings shall notify the department of the location of the plants and seedlings pursuant to 50-46-303(8)(b).~~

~~(c)~~(b) A provider or marijuana-infused products provider may have the canopy allowed by the department for the provider or marijuana-infused products provider. The canopy allotment is a cumulative total for all of the provider's or marijuana-infused products provider's registered premises and may not be interpreted as an allotment for each premises.

~~(d)~~(c) (i) A registered cardholder may petition the department for an exception to the monthly limit on purchases. The request must be accompanied by a confirmation from the physician who signed the cardholder's written certification that the cardholder's debilitating medical condition warrants purchase of an amount exceeding the monthly limit.

(ii) If the department approves an exception to the cap, the approval must establish the monthly amount of usable marijuana that the cardholder may purchase and the limit must be entered into the seed-to-sale tracking system.

(2) Except as provided in 50-46-320 and subject to the provisions of subsection (7) of this section, an individual who possesses a registry identification card or license issued pursuant to this part may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

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

(b) the registered cardholder acquires or uses marijuana.

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

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

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

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

(5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as

provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity of the use of marijuana and marijuana-infused products as permitted under this part.

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

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

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

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

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

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

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

Section 81. Section 50-46-345, MCA, is amended to read:

"**50-46-345. Medical marijuana state special revenue account -- operating reserve -- transfer of excess funds.** (1) There is a medical marijuana state special revenue account within the state special revenue fund established in 17-2-102.

(2) The account consists of:

(a) money deposited into the account pursuant to 50-46-344 and 50-46-347;

(b) the tax collected pursuant to Title 15, chapter 64, part 1; and

(c) civil penalties collected under this part.

(3) Except as provided in subsection (4), money in the account must be used by the department for the purpose of administering the Montana Medical Marijuana Act and tracking system development.

~~(4) (a) At the end of each fiscal year, the department shall transfer funds in excess of a $250,000 operating reserve as provided in this subsection (4).~~

~~(b) At the end of fiscal year 2019:~~

~~(i) the first $2.5 million in excess funds must be transferred to the mental health services special revenue account provided for in 53-21-1207; and~~

~~(ii) any remaining excess funds must be transferred to the pain management education and treatment special revenue account provided for in 50-46-346.~~

~~(c) At the end of fiscal year 2020 and subsequent fiscal years, any excess funds must be transferred to the pain management education and treatment special revenue account provided for in 50-46-346.~~

(4) The account's balance shall be transferred to the marijuana state special revenue account provided for in 16-12-111:

(a) on July 1, 2021; and

(b) on December 31, 2021."

Section 82. Section 50-46-346, MCA, is amended to read:

"**50-46-346. Pain management education and treatment special revenue account.** (1) There is a pain management education and treatment account in the state special revenue fund provided for in 17-2-102 to the credit of the department.

(2) The account consists of money transferred into the account as provided in 50-46-345.

(3) Money in the account must be used by the department for:

(a) efforts to educate the public about using pain management techniques and treatments that do not involve the use of opioid drugs; and

(b) a block grant program to pay the costs of the following alternative pain management treatments for individuals who have no other payment source for the treatments:

(i) acupuncture;

(ii) chiropractic;

(iii) physical therapy; and

(iv) naturopathic physician services.

(4) The block grant program must be operated in accordance with criteria established by the department as allowed under 53-24-204.

(5) On July 1, 2021, the account's balance shall be transferred to the marijuana state special revenue account provided for in 16-12-111."

Section 83. Section 50-46-347, MCA, is amended to read:

"**50-46-347. Provider licensing fees.** (1) Unless reduced as allowed under 50-46-303(5)(b), annual license fees for providers and marijuana-infused products providers are based on the volume of the provider's production of marijuana.

(2) Annual fees for providers and marijuana-infused products providers are:

(a) $500 for a provider with a micro tier canopy license;

(b) $1,000 for a provider with a tier 1 canopy license;

(c) $2,500 for a provider with a tier 2 canopy license;

(d) $5,000 for a provider with a tier 3 canopy license;

(e) $7,500 for a provider with a tier 4 canopy license;

(f) $10,000 for a provider with a tier 5 canopy license;

(g) $13,000 for a provider with a tier 6 canopy license;

(h) $15,000 for a provider with a tier 7 canopy license;

(i) $17,500 for a provider with a tier 8 canopy license; and

(j) $20,000 for a provider with a tier 9 canopy license.

(3) A provider of both marijuana and marijuana-infused products is required to have only one canopy license.

(4) The fee required under this part may be imposed based only on the tier of licensure and may not be applied separately to each registered premises used for cultivation under the licensure level.

(5) The department shall charge an annual dispensary license fee in addition to the canopy license

fee provided for in subsection (2). The dispensary license fee is based on the total number of registered premises used as dispensaries as follows:

(a) one registered premises, $500;

(b) two or three registered premises, $5,000

(c) four or five registered premises, $25,000; and

(d) six or more registered premises, $100,000.

(6) Money collected from license fees paid pursuant to this section must be deposited in the special revenue account provided for in ~~50-46-345~~ 16-12-111."

Section 84. Section 53-6-1201, MCA, is amended to read:

"**53-6-1201. (Subsection (2)(c) effective October 1, 2021) Special revenue fund -- health and medicaid initiatives.** (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(2)(c);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(4)(b); and

~~(c) money from marijuana taxes deposited under 16-12-111; and~~

~~(d)~~(c) any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to

increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits; and

(e) grants to schools for suicide prevention activities, for the biennium beginning July 1, 2017.

(4) (a) On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

(b) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section."

Section 85. Section 53-21-1207, MCA, is amended to read:

"**53-21-1207. Mental health services special revenue account.** (1) There is a mental health services special revenue account within the state special revenue fund established in 17-2-102.

(2) The account consists of:

(a) money transferred into the account ~~as provided in 50-46-345~~; and

(b) money appropriated by the legislature.

(3) Money in the account must be used by the department to pay for services provided by behavioral health peer support specialists pursuant to 53-6-101."

Section 86. Section 61-8-402, MCA, is amended to read:

"**61-8-402. Implied consent -- blood or breath tests for alcohol, <u>blood or oral fluid for</u> drugs, or**

testing for both alcohol and drugs using recognized methods for each -- refusal to submit to test -- administrative license suspension. (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol, or blood or oral fluid for the purpose of determining any measured amount or detected presence of drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the person has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401, 61-8-411, or 61-8-465;

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle:

(A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage;

(B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in 45-2-101, or death; or

(C) in violation of 61-8-465.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given except as provided in subsection (5), but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the

peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (8).

(5) If the arrested person has refused to provide a breath, blood, ~~or~~ urine, or oral fluid sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction or the arrested person has a prior conviction or pending offense for a violation of 45-5-104, 45-5-106, 45-5-205, 61-8-401, 61-8-406, or 61-8-411 or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued pursuant to 46-5-224 to collect a sample of the person's blood for testing.

(6) (a) An arrested person who refuses to submit to one or more tests as provided in subsection (4) shall pay the department an administrative fee of $300, which must be deposited in the state special revenue account established pursuant to subsection (6)(b).

(b) There is a blood-draw search warrant processing account in the state special revenue fund established pursuant to 17-2-102(1)(b). Money provided to the department of justice pursuant to this subsection (6) must be deposited in the account and may be used only for the purpose of providing forensic analysis of a driver's blood to determine the presence of alcohol or drugs.

(c) The department shall adopt rules establishing procedures for the collection, distribution, and strict accountability of any funds received pursuant to this section.

(7) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing provided in 61-8-403.

(8) (a) Except as provided in subsection (8)(b), the following suspension periods are applicable upon refusal to submit to one or more tests:

(i) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving

privileges, the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (8)(b).

(9) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(10) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(11) A suspension under this section is subject to review as provided in this part.

(12) This section does not apply to tests, samples, and analyses of blood, ~~or~~ breath, or urine used for purposes of medical treatment or care of an injured motorist, related to a lawful seizure for a suspected violation of an offense not in this part, or performed pursuant to a search warrant.

(13) This section does not prohibit the release of information obtained from tests, samples, and analyses of blood or breath for law enforcement purposes as provided in 46-4-301 and 61-8-405(6)."

Section 87. Section 61-8-404, MCA, is amended to read:

"**61-8-404. Evidence admissible -- conditions of admissibility.** (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, 61-8-411, 61-8-465, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of

alcohol and drugs in the person at the time of a test, as shown by an analysis of the person's blood, ~~or~~ breath, or oral fluid, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

(b) a report of the facts and results of one or more tests of a person's blood, ~~or~~ breath, or oral fluid is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the forensic sciences division of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissible in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests under 61-8-402, whether or not a sample was subsequently collected for any purpose, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohol and drugs. The trier of fact may infer from the refusal that the person was under the influence. The inference is rebuttable.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

Section 88. Section 61-8-405, MCA, is amended to read:

"**61-8-405. Administration of tests.** (1) Only a physician, registered nurse, or other qualified person

acting under the supervision and direction of a physician or registered nurse may, at the request of a peace officer, withdraw blood for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. This limitation does not apply to the sampling of breath.

(2) In addition to any test administered at the direction of a peace officer, a person may request that an independent blood sample be drawn by a physician or registered nurse for the purpose of determining any measured amount or detected presence of alcohol, drugs, or any combination of alcohol and drugs in the person. The peace officer may not unreasonably impede the person's right to obtain an independent blood test. The officer may but has no duty to transport the person to a medical facility or otherwise assist the person in obtaining the test. The cost of an independent blood test is the sole responsibility of the person requesting the test. The failure or inability to obtain an independent test by a person does not preclude the admissibility in evidence of any test given at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning any test given at the direction of the peace officer must be made available to the person or the person's attorney.

(4) A physician, registered nurse, or other qualified person acting under the supervision and direction of a physician or registered nurse does not incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer a test.

(5) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary.

(6) If a peace officer has probable cause to believe that a person has violated 61-8-401, 61-8-406, 61-8-410, 61-8-411, 61-8-465, or 61-8-805 and a sample of blood, breath, urine, <u>oral fluid,</u> or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis must be provided to a peace officer if requested for law enforcement purposes and upon issuance of a subpoena as provided in 46-4-301."

Section 89. Section 61-8-409, MCA, is amended to read:

"**61-8-409. Preliminary alcohol <u>or drug</u> screening test.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a

preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, or a preliminary drug screening test of a person's oral fluid for the purpose of estimating the person's drug concentration(s), upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of alcohol and drugs or in violation of 61-8-410 or 61-8-465.

(2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting to a preliminary alcohol screening test, preliminary drug screening test, or both pursuant to this section.

(3) The peace officer shall inform the person of the right to refuse the test and that the refusal to submit to the preliminary alcohol screening test, preliminary drug screening test, or both will result in the suspension for up to 1 year of that person's driver's license.

(4) If the person refuses to submit to a test under this section, a test will not be given except as provided in 61-8-402(5). However, the refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402.

(5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited to determining whether a peace officer had a particularized suspicion that the person was driving or in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in violation of 61-8-410 and whether the person refused to submit to the alcohol test.

(6) The provisions of 61-8-402(3) through (10) that do not conflict with this section are applicable to refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

(7) A test may not be conducted or requested under this section unless both the peace officer and the instrument used to conduct the preliminary alcohol screening test or preliminary drug screening test have been certified by the department pursuant to rules adopted under the authority of 61-8-405(5)."

Section 90. Section 61-8-442, MCA, is amended to read:

"**61-8-442. Driving under influence of alcohol or drugs -- driving with excessive alcohol concentration -- ignition interlock device -- 24/7 sobriety and drug monitoring program -- forfeiture of**

vehicle. (1) In addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-465, regardless of disposition and if a probationary license is recommended by the court, the court may, for a person convicted of a first offense under 61-8-401, 61-8-406, 61-8-411, or 61-8-465:

(a) restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device; or

(b) require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program.

(2) If a person is convicted of a second or subsequent violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465, in addition to the punishments provided in 61-8-714, 61-8-722, and 61-8-465, regardless of disposition, the court shall:

(a) if recommending that a probationary license be issued to the person, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device during the probationary period and require the person to pay the reasonable cost of leasing, installing, and maintaining the device;

(b) require the person to participate in the 24/7 sobriety and drug monitoring program provided for in 44-4-1203 and pay the fees associated with the program or require the person to participate in a court-approved alcohol or drug detection testing program and pay the fees associated with the testing program; or

(c) order that each motor vehicle owned by the person at the time of the offense be seized and subjected to the forfeiture procedure provided under 61-8-421.

(3) Any restriction or requirement imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(4) The duration of a restriction imposed under this section must be monitored by the department.

<u>(5) All court-approved alcohol or drug detection testing programs allowed under this section are required to use the state's data management system pursuant to 44-4-1203.</u>"

Section 91. Section 61-11-101, MCA, is amended to read:

"**61-11-101. Report of convictions and suspension or revocation of driver's licenses --**

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

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

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

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

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

(5) (a) If a person who holds a valid registry identification card or license issued pursuant to ~~50-46-307~~ [section ~~17~~ 12] or ~~50-46-308~~ 16-12-203 is convicted of or pleads guilty to any offense related to driving

under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-411, the court in which the conviction occurs shall require the person to surrender the registry identification card or license.

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

Section 92. Section 80-1-104, MCA, is amended to read:

"**80-1-104. (Bracketed language effective October 1, 2021) Analytical laboratory services -- rulemaking authority -- deposit of fees.** (1) The department is authorized to provide analytical laboratory services for:

(a) programs it operates under this title;

(b) other state or federal agencies;

~~(c) providers and marijuana-infused products providers as those terms are defined in 50-46-302;~~

~~[(d) adult-use marijuana providers and adult-use marijuana-infused products providers as those terms are defined in 16-12-102;]~~

~~(e)~~(c) the department of ~~public health and human services~~ revenue for the purposes of ~~[Title~~ Title 16, chapter 12, ~~and] Title 50, chapter 46, part 3,~~ as allowed by federal law; and

~~(f)~~(d) private parties.

(2) The department may enter into a contract or a memorandum of understanding for the space and equipment necessary for operation of the analytical laboratory.

(3) (a) The department may adopt rules establishing fees for testing services required under this title or provided to another state agency, a federal agency, or a private party.

(b) Money collected from the fees must be deposited in the appropriate related account in the state special revenue fund to the credit of the department to pay costs related to analytical laboratory services provided pursuant to this section."

NEW SECTION. **Section 93. Repealer.** The following sections of the Montana Code Annotated are repealed:

16-12-205. (Effective October 1, 2021) Contracted services.

16-12-401. (Effective October 1, 2021) Tax on marijuana sales.

16-12-402. (Effective October 1, 2021) Returns -- payment -- recordkeeping -- authority of department.

16-12-403. (Effective October 1, 2021) Deficient assessment -- penalty and interest -- statute of limitations.

16-12-404. (Effective October 1, 2021) Procedure to compute tax in absence of statement -- estimation of tax -- failure to file -- penalty and interest.

16-12-405. (Effective October 1, 2021) Authority to collect delinquent taxes.

16-12-406. (Effective October 1, 2021) Refunds -- interest -- limitations.

16-12-407. (Effective October 1, 2021) Information -- confidentiality -- agreements with another state.

16-12-408. (Effective October 1, 2021) Department to make rules.

50-46-301. Short title -- purpose.

50-46-302. Definitions.

50-46-304. Department responsibility to monitor and assess medical marijuana production, testing, and sales -- license revocation.

50-46-303. Medical marijuana registry -- department responsibilities -- issuance of cards and licenses — confidentiality.

50-46-305. Canopy tiers -- requirements.

50-46-307. Individuals with debilitating medical conditions -- requirements -- minors -- limitations.

50-46-308. Provider types -- requirements -- limitations -- activities.

50-46-309. Marijuana-infused products provider -- requirements -- allowable activities.

50-46-310. Written certification -- accompanying statements.

50-46-311. Testing laboratories -- licensing inspections.

50-46-312. License as privilege -- criteria.

50-46-317. Registry card or license to be exhibited on demand -- photo identification required.

50-46-318. Health care facility procedures for patients with marijuana for use.

50-46-319. Legal protections -- allowable amounts.

50-46-320. Limitations of act.

50-46-326. Testing of marijuana and marijuana-infused products.

50-46-327. Prohibitions on physician affiliation with providers and marijuana-infused products providers -- sanctions.

50-46-328. Local government authority to regulate.

50-46-329. Inspections -- procedures -- prohibition on inspector affiliation with licensees.

50-46-330. Unlawful conduct by cardholders or licensees -- penalties.

50-46-331. Fraudulent representation -- penalties.

50-46-332. Confidentiality of registry information -- penalty.

50-46-339. Law enforcement authority.

50-46-340. Forfeiture.

50-46-341. Advertising prohibited.

50-46-342. Hotline.

50-46-343. Legislative monitoring.

50-46-344. Rulemaking authority -- fees.

50-46-345. Medical marijuana state special revenue account -- operating reserve -- transfer of excess funds.

50-46-346. Pain management education and treatment special revenue account.

50-46-347. Provider licensing fees.

NEW SECTION. **Section 94. Transfer of funds.** On July 1, 2021, the department of public health and human services is authorized to transfer the fund balances in 50-46-345 and 50-46-346 to the marijuana state special revenue account provided for under 16-12-111.

NEW SECTION. **Section 95. Repealer.** Sections 37 and 52, Initiative Measure No. 190, approved November 3, 2020, are repealed.

Section 96. Section 56, Initiative Measure No. 190, approved November 3, 2020, is amended to read:

"**Section 56. Effective dates.** (1) [Sections 8, 16, 23, 36, and 40 through 49] are effective January 1, 2021.

(2) Except as provided in ~~subsection~~ subsections (1) and (3), [this act] is effective ~~on October 1, 2021~~ January 1, 2022.

(3) [Sections 18 and 35] are effective July 1, 2021."

NEW SECTION. **Section 97. Appropriation.** (1) There is appropriated from the marijuana state special revenue account provided for in 16-12-111 to the department of revenue:

(a) $6,176,726 for fiscal year 2022, which comprises 51 total FTE. 22 of the 51 FTE represent positions transferred from the department of public health and human services to the department of revenue.

(b) $7,715,437 for fiscal year 2023 and which comprises 68 total FTE. 22 of the 68 FTE represent positions transferred from the department of public health and human services to the department of revenue.

(c) The appropriations described in subsections (1)(a) and (1)(b) must be used by the department of revenue for the operating costs it incurs when administering the provisions of [this act].

(d) The appropriation provided for in this subsection (1) must be considered a part of the base budget for the 2025 biennium.

(2) The following amounts are appropriated for each year of the 2023 biennium to the department of public health and human services for eligible services and programs in accordance with the HEART fund that is set forth in 17-6-606:

(a) $6 million in state special revenue funds to the department of public health and human services; and

(b) $19 million in federal special revenue funds to the department of public health and human services.

(c) It is the intent of the legislature that these appropriation amounts be included as part of the base budget for the department of public health and human services for the biennium beginning July 1, 2023.

(3) If the funds are available, the following amounts are appropriated for each year of the 2023 biennium from the marijuana state special revenue account as provided for in 16-12-111:

(a) Up to $650,000 to the state park account established in 23-1-105(1);

(b) Up to $650,000 to the trails and recreational facilities account established in 23-2-108; and

(c) Up to $650,000 to the nongame wildlife account established in 87-5-121.

NEW SECTION. **Section 98. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. **Section 99. Direction to department of revenue, department of public health and human services, and local governments -- notification to legislature -- transition.** (1) The legislature directs the department of revenue to adopt rules to implement the Marijuana Regulation and Taxation Act.

(2) The legislature directs the department of public health and human services to assist the department of revenue with the transfer of FTE, information, materials, and any other marijuana-related asset that the department of revenue considers necessary to implement the regulation and taxation of marijuana in the state and exercise authority over the regulation of all types of marijuana licenses and the medical marijuana registry in the state.

(3) On or after July 1, 2021, the department of public health and human services is authorized to transfer the fund balances in 50-46-345 and 50-46-346 to the marijuana state special revenue account provided for under 16-12-111.

(4) (a) On July 1, 2021, the department of health and human services shall transfer to the department of revenue the existing license and applicable endorsements for any provider or marijuana-infused products provider that was licensed with the department of public health and human services on November 3, 2020, and is in good standing with the department of public health and human services as of the date of the transfer.

(b) Existing licenses transferred pursuant to subsection (4)(a) shall be accepted and administered by the department of revenue in accordance with 16-12-201(2) and rules adopted by the department of revenue for the time periods set forth in 16-12-201(2).

(c) The intent of the legislature with this subsection (4) and the provisions of 16-12-201(2) is that a provider or marijuana-infused products provider that was licensed with the department of public health and human services on November 3, 2020, will be able to continue providing marijuana and marijuana products to registered cardholders without disruption while also obtaining the appropriate licensure under this Act in an expedient manner.

(5) Local governments are encouraged to begin the process to approve any or all marijuana business

categories in accordance with [section ~~60~~ 55]~~, implement the local excise tax in accordance with [sections 8 through 12], or both~~ beginning on July 1, 2021, in anticipation of the department of revenue beginning to accept applications for licensure on January 1, 2022.

NEW SECTION. **Section 100. Codification instruction.** (1) [Sections 1 through 2] are intended to be codified as an integral part of Title 16, chapter 12, part 1, and the provisions of Title 16, chapter 12, part 1, apply to [sections 1 through 2].

(2) [Sections 3 through 7] are intended to be codified as an integral part of Title 16, chapter 12, part 2, and the provisions of Title 16, chapter 12, part 2, apply to [sections 3 through 7].

~~(3) [Sections 8 through 12] are intended to be codified as an integral part of Title 16, chapter 12, part 3, and the provisions of Title 16, chapter 12, part 3, apply to [sections 8 through 12].~~

~~(4)~~(3) [Section ~~13~~ 8] is intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section ~~13~~ 8].

~~(5)~~(4) [Sections ~~14 through 28~~ 9 through 23] are intended to be codified as a new part in Title 16, chapter 12, and the provisions of Title 16, chapter 12, apply to [sections ~~14 through 28~~ 9 through 23].

NEW SECTION. **Section 101. Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective January 1, 2022.

(2) [Sections ~~43(1)(a)~~ 38(1)(a), (1)(b), (8) through (12); ~~83(2)~~ 78(2) and (8)(b), ~~84, 85, 101, 104,~~ 79, 80, 96, 99, and this section] are effective on passage and approval.

(3) [Sections ~~8 through 12, 48, 60, 82, 83(11), 86 through 88, 99, 100, and 102~~ 43, 55, 77, 78(11), 81 through 83, 94, 95, and 97] are effective July 1, 2021.

NEW SECTION. **Section 102. Termination.** [Section ~~40(14)(b)(ii)~~ 35(14)(b)(ii)] terminates October 1, 2023. After October 1, 2023, a hoop house is not an indoor cultivation facility.

- END -