

1 SENATE BILL NO. 341

2 INTRODUCED BY D. HOWARD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING BUSINESS LAWS RELATED TO THE
5 SALE OF MARIJUANA; PROVIDING REQUIREMENTS AND LIMITATIONS ON THE NUMBER AND
6 LOCATION OF DISPENSARIES; PROVIDING LIMITS ON WEEKLY MARIJUANA PURCHASES BY
7 CONSUMERS; PROHIBITING PEOPLE WITH FELONIES FROM OWNING OR WORKING IN
8 DISPENSARIES FOR 10 YEARS AFTER CONVICTION; PROVIDING EMPLOYER PROTECTIONS UNDER
9 THE WRONGFUL DISCHARGE ACT; LIMITING THC LEVELS; PROVIDING RULEMAKING AUTHORITY;
10 AND AMENDING SECTIONS 16-12-104, 16-12-105, 16-12-106, 16-12-108, 16-12-112, 16-12-203, 16-12-207,
11 16-12-208, AND 39-2-313, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 16-12-104, MCA, is amended to read:

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

19 (a) licenses:

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

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

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

27 (2) A person who obtains an adult-use provider license, adult-use marijuana-infused products
28 provider license, or adult-use dispensary license or an employee of a licensed adult-use provider or adult-use

1 marijuana-infused products provider is authorized to cultivate, manufacture, possess, sell, and transport
2 marijuana as allowed by this chapter.

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

5 (4) The department shall conduct criminal history background checks as required by 50-46-307 and
6 50-46-308 before issuing a license to a person named as a provider or marijuana-infused products provider.

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

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

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

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

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

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

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

18 (i) within 30 days of receiving the application or renewal and all related application materials from an
19 existing licensed provider or marijuana-infused products provider; and

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

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

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

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

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

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

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

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

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

11 (8) Licenses and endorsements issued to adult-use providers and adult-use marijuana-infused
12 products providers must be renewed annually.

13 (9) The department shall provide the names and phone numbers of adult-use providers and adult-use
14 marijuana-infused products providers and the city, town, or county where registered premises and testing
15 laboratories are located to the public on the department's website. The department may not disclose the
16 physical location or address of an adult-use provider, adult-use marijuana-infused products provider, adult-use
17 dispensary, or testing laboratory.

18 (10) The department may not prohibit an adult-use provider, adult-use marijuana-infused products
19 provider, or adult-use dispensary licensee from operating at a shared location with a provider, marijuana-
20 infused products provider, or dispensary as defined in 50-46-302 if the provider, marijuana-infused products
21 provider, or dispensary is owned by the same person.

22 (11) The department may not adopt rules requiring a consumer to provide an adult-use provider, adult-
23 use marijuana-infused products provider, or adult-use dispensary licensee with identifying information other
24 than identification to determine the consumer's age or require the recording of personal information about
25 consumers other than information typically required in a retail transaction except as necessary to implement the
26 weekly purchase limitation described in 16-12-105 and 16-12-106."

27

28 **Section 2.** Section 16-12-105, MCA, is amended to read:

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

6 (i) ensure that the marijuana, marijuana concentrate, or marijuana-infused product cultivated,
 7 manufactured, possessed, and sold under this chapter is not sold or otherwise provided to an individual who is
 8 under 21 years of age and who is not a medical marijuana registered cardholder;

9 (ii) be capable of notifying adult-use providers and adult-use marijuana-infused products providers,
 10 before a sale is made, of the amount of marijuana a consumer may purchase before reaching the weekly limit
 11 provided in 16-12-106; and

12 ~~(ii)~~(iii) be made available to adult-use providers, adult-use marijuana-infused products providers, adult-
 13 use dispensaries, and testing laboratories at no additional cost.

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

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

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

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

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

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

1 (B) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one registered premises.
2 A minimum of 500 square feet must be equipped for cultivation.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) The department may create additional licensing tiers by rule if a provider with a tier 10 canopy
2 license petitions the department to create a new licensure level and:

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

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

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

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

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

18 (h) No person may be initially licensed greater than a tier 2 unless the person is purchasing a
19 business licensed at a tier higher than tier 2 or the person is already licensed at higher than tier 2 under Title
20 50, chapter 46, part 3, and is applying for the equivalent size tier under this chapter."

21

22 **Section 3.** Section 16-12-106, MCA, is amended to read:

23 **"16-12-106. Personal use and cultivation of marijuana -- penalties.** (1) Subject to the limitations in
24 16-12-108, the following acts are lawful and may not be an offense under state law or the laws of any local
25 government within the state, be a basis to impose a civil fine, penalty, or sanction, or be a basis to detain,
26 search, or arrest, or otherwise deny any right or privilege, or to seize or forfeit assets under state law or the
27 laws of any local government for a person who is 21 years of age or older:

28 (a) possessing, purchasing, ~~obtaining~~, using, ingesting, inhaling, or transporting 1 ounce or less of

1 marijuana, except that not more than 8 grams may be in a concentrated form;

2 (b) purchasing a weekly maximum of 1 ounce of marijuana or 8 grams of marijuana in a concentrated
3 form;

4 ~~(b)(c)~~ transferring, delivering, or distributing without consideration, to a person who is 21 years of age
5 or older, 1 ounce or less of marijuana, except that not more than 8 grams may be in a concentrated form;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (a) for a first violation, the person's choice between a civil fine not exceeding \$200 or completing up to
20 4 hours of community service in lieu of the fine;

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

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

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

27 (8) A person may not be denied adoption, custody, or visitation rights relative to a minor solely for
28 conduct that is permitted by this chapter.

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

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

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

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

10

11 **Section 4.** Section 16-12-108, MCA, is amended to read:

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

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

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

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

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

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

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

25 (g) possession or consumption of marijuana or possession of marijuana paraphernalia:

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

28 (ii) in a school bus;

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

2 (iv) on the grounds of any correctional facility;

3 (h) smoking marijuana in a location where smoking tobacco is prohibited;

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

5 (j) conduct that endangers others;

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

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

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

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

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

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

19 (d) prevent an employer from taking an adverse employment action against an individual in
20 conformance with 39-2-313.

21 (3) Nothing in this chapter may be construed to prohibit a person from prohibiting or otherwise
22 regulating the consumption, cultivation, distribution, processing, sale, or display of marijuana, marijuana-infused
23 products, and marijuana paraphernalia on private property the person owns, leases, occupies, or manages,
24 except that a lease agreement executed after January 1, 2021, may not prohibit a tenant from lawfully
25 possessing and consuming marijuana by means other than smoking unless required by federal law or to obtain
26 federal funding.

27 (4) Nothing in this chapter limits the rights, privileges, immunities, or defenses provided under Title
28 50, chapter 46, part 3.

1 (5) An adult-use provider or adult-use marijuana-infused products provider who violates 15-64-103 or
 2 15-64-104 is subject to revocation of the person's license from the date of the violation until a period of up to 1
 3 year after the department of revenue certifies compliance with 15-64-103 or 15-64-104."

4

5 **Section 5.** Section 16-12-112, MCA, is amended to read:

6 **"16-12-112. (Effective October 1, 2021) Rulemaking authority -- fees.** (1) The department ~~may~~
 7 shall adopt rules to implement and administer this chapter, including:

8 (a) the manner in which the department will consider applications for licenses and endorsements and
 9 renewal of licenses and endorsements;

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

11 (c) the procedures for obtaining fingerprints for the fingerprint-based and name-based background
 12 checks required under 16-12-203;

13 (d) the security and operating requirements for adult-use dispensaries, including developing required
 14 measures that adult-use dispensaries must take to prevent sales to persons under 21 years of age;

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

17 (i) safety equipment;

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

19 (iii) post-processing procedures;

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

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

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

28 (i) requirements that packaging and labels may not be made to be attractive to children, required

1 warning labels, and that marijuana and marijuana-infused products be sold in resealable, child-resistant
2 packaging to protect public health as provided in 16-12-208;

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

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

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

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

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

12 (o) the fees for endorsements for manufacturing, testing laboratories, additional canopy licensure tiers
13 created in accordance with 16-12-105, and the fingerprint-based and name-based background checks required
14 under 16-12-203. The fees and other revenue collected through the taxes paid under 16-12-401, civil penalties
15 imposed pursuant to this chapter, and the licensing fees established by rule and in 16-12-201 must be sufficient
16 to offset the expenses of administering this chapter but may not exceed the amount necessary to cover the
17 costs to the department of implementing and enforcing this chapter.

18 (2) The department may not adopt any rule or regulation that is unduly burdensome or undermines
19 the purposes of this chapter.

20 (3) The department may consult or contract with other public agencies in carrying out its duties under
21 this chapter."

22

23 **Section 6.** Section 16-12-203, MCA, is amended to read:

24 **"16-12-203. (Effective October 1, 2021) Provider types -- requirements -- limitations -- activities.**

25 (1) (a) Subject to subsections (1)(b) and (3), the department shall issue a license to or renew a license for a
26 person who is applying to be an adult-use provider or adult-use marijuana-infused products provider if the
27 person submits to the department:

28 (i) the person's name, date of birth, and street address on a form prescribed by the department;

- 1 (ii) proof that the person is a Montana resident;
- 2 (iii) fingerprints meeting the requirements for a fingerprint-based background check by the department
3 of justice and the federal bureau of investigation:
- 4 (A) with the application for initial licensure; and
- 5 (B) every 3 years thereafter;
- 6 (iv) a statement, on a form prescribed by the department, that the person will not divert to any other
7 person the marijuana that the person cultivates or the marijuana-infused products that the person manufactures
8 for consumers, unless the marijuana or marijuana-infused products are sold to another adult-use provider or as
9 part of a sale of a business as allowed under this section;
- 10 (v) the street address of the location at which marijuana, marijuana concentrates, or marijuana-
11 infused products will be cultivated or manufactured; and
- 12 (vi) a fee as determined by the department not to exceed the costs of required background checks and
13 associated administrative costs of processing the license.
- 14 (b) If the person to be licensed consists of more than one individual, the names of all owners must be
15 submitted along with the fingerprints and date of birth of each.
- 16 (2) The department shall conduct:
- 17 (a) a fingerprint-based background check in association with an application for initial licensure and
18 every 3 years thereafter; and
- 19 (b) a name-based background check in association with an application for initial licensure and each
20 year thereafter except years that an applicant is required to submit fingerprints for a fingerprint-based
21 background check.
- 22 (3) The department may not license a person under this chapter if the person or an owner:
- 23 (a) ~~has a felony conviction involving fraud, deceit, or embezzlement or for distribution of drugs to a~~
24 ~~minor within the past 5 years and, after an investigation, the department finds that the applicant has not been~~
25 ~~sufficiently rehabilitated as to warrant the public trust;~~
- 26 (b) is in the custody of the department of corrections or a youth court;
- 27 (c) has been convicted of a violation under 16-12-302;
- 28 (d) has resided in Montana for less than 1 year; or

1 (e) is under 18 years of age.

2 (4) Marijuana for use pursuant to this chapter must be cultivated and manufactured in Montana until
3 federal law allows for the interstate distribution of marijuana.

4 (5) Except as provided in 16-12-209, an adult-use provider or adult-use marijuana-infused products
5 provider shall:

6 (a) prior to selling marijuana or marijuana-infused products, submit samples to testing laboratories
7 pursuant to this chapter and administrative rules;

8 (b) allow the department to collect samples of marijuana or marijuana-infused products during
9 inspections of registered premises for testing as provided by the department by rule;

10 (c) participate as required by the department by rule in a seed-to-sale tracking system established by
11 the department pursuant to 16-12-105; and

12 (d) obtain the license from the department of agriculture if required by 80-7-106 for the adult-use
13 provider or adult-use marijuana-infused products provider that sells live plants as part of a sale of the adult-use
14 provider's business. An adult-use provider or adult-use marijuana-infused products provider required to obtain a
15 nursery license is subject to the inspection requirements of 80-7-108.

16 (6) (a) Except as provided in 16-12-205, a person licensed under this section may cultivate marijuana
17 and manufacture marijuana-infused products for use by consumers only at one of the following locations:

18 (i) a property that is owned by the adult-use provider or adult-use marijuana-infused products
19 provider; or

20 (ii) with written permission of the property owner, a property that is rented or leased by the adult-use
21 provider or adult-use marijuana-infused products provider.

22 (b) Except as provided in 16-12-205, no portion of the property used for cultivation of marijuana or
23 manufacture of marijuana-infused products or marijuana concentrate may be shared with or rented or leased to
24 another adult-use provider, adult-use marijuana-infused products provider, or testing laboratory.

25 (7) A licensed adult-use provider or adult-use marijuana-infused products provider may:

26 (a) in accordance with rules adopted by the department:

27 (i) operate adult-use dispensaries; and

28 (ii) engage in manufacturing;

1 (b) employ employees to cultivate marijuana, manufacture marijuana concentrates and marijuana-
2 infused products, and dispense and transport marijuana and marijuana-infused products;

3 (c) provide a small amount of marijuana, marijuana concentrate, or marijuana-infused product
4 cultivated or manufactured on the registered premises to a licensed testing laboratory or the department of
5 agriculture;

6 (d) sell the adult-use provider's business, including live plants, inventory, material assets, and all
7 licenses in accordance with rules adopted by the department; and

8 (e) hold a provider or marijuana-infused products provider license issued pursuant to Title 50, chapter
9 46, part 3.

10 (8) (a) Except as provided in subsection (8)(b), an adult-use provider or adult-use marijuana-infused
11 products provider:

12 (i) shall sell marijuana the adult-use provider has cultivated or marijuana products derived from
13 marijuana the adult-use marijuana-infused products provider has cultivated for at least 50% of the provider's
14 total annual sales;

15 (ii) may sell marijuana or marijuana-infused products to another adult-use provider for subsequent
16 resale for up to 50% of the adult-use provider's total annual sales;

17 (iii) may contract or otherwise arrange for another party that is licensed to process the adult provider's
18 or adult marijuana-infused products provider's marijuana into marijuana-infused products or marijuana
19 concentrates and return the marijuana-infused products or marijuana concentrates to the adult-use provider for
20 sale; and

21 (iv) except as allowed pursuant to 16-12-207, may not open a dispensary or allow for any on-site use
22 before obtaining the required license or before the department has completed the inspection required under this
23 chapter unless permitted to do so pursuant to 16-12-207.

24 (b) The department may adjust the percentages set forth in subsection (8)(a) for an individual license
25 holder based on unforeseen circumstances leading to the loss of plants or products."

26

27 **Section 7.** Section 16-12-207, MCA, is amended to read:

28 **"16-12-207. (Effective October 1, 2021) Licensing as privilege -- criteria.** (1) An adult-use provider

1 license, adult-use marijuana-infused products provider license, adult-use dispensary license, or endorsement
 2 for manufacturing is a privilege that the state may grant to an applicant and is not a right to which an applicant
 3 is entitled. In making a licensing decision, the department shall consider:

- 4 (a) the qualifications of the applicant; and
 5 (b) the suitability of the proposed registered premises.

6 (2) The department may deny or revoke a license based on proof that the applicant made a knowing
 7 and material false statement in any part of the original application or renewal application.

8 (3) The department may deny an adult-use provider license, adult-use marijuana-infused products
 9 provider license, adult-use dispensary license, or endorsement for manufacturing if the applicant's proposed
 10 registered premises is situated within a zone of a locality where an activity related to the use of marijuana
 11 conflicts with an ordinance, a certified copy of which has been filed with the department.

12 (4) (a) The department may deny a license for an adult-use provider, adult-use marijuana-infused
 13 products provider, or adult-use dispensary or an endorsement for manufacturing if the applicant's proposed
 14 registered premises:

- 15 (i) is not approved by local building, health, or fire officials; or
 16 (ii) is within ~~500~~ 1,000 feet of and on the same street as a building used exclusively as a church,
 17 synagogue, or other place of worship or as a school or postsecondary school other than a commercially
 18 operated school, ~~unless the locality allows for a reduced distance.~~ This distance must be measured in a straight
 19 line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the
 20 licensee's premises.

21 (b) For the purposes of this subsection (4), "school" and "postsecondary school" have the meanings
 22 provided in 20-5-402.

23 (5) An adult-use provider, adult-use marijuana-infused products provider, or adult-use dispensary
 24 licensee may operate at a shared location with a provider, marijuana-infused products provider, or dispensary
 25 as defined in 50-46-302 if the provider, marijuana-infused products provider, or dispensary is owned by the
 26 same person."

27

28 **Section 8.** Section 16-12-208, MCA, is amended to read:

1 **"16-12-208. (Effective October 1, 2021) Restrictions.** (1) An adult-use provider or adult-use
2 marijuana-infused products provider may not cultivate marijuana or manufacture marijuana concentrates or
3 marijuana-infused products in a manner that is visible from the street or other public area without the use of
4 binoculars, aircraft, or other optical aids.

5 (2) An adult-use provider or adult-use marijuana-infused products provider may not cultivate, process,
6 test, or store marijuana at any location other than the registered premises approved by the department and
7 within an enclosed area that is secured in a manner that prevents access by unauthorized persons.

8 (3) An adult-use provider or adult-use marijuana-infused products provider shall secure the provider's
9 inventory and equipment during and after operating hours to deter and prevent theft of marijuana.

10 (4) An adult-use provider or adult-use marijuana-infused products provider shall make the registered
11 premises, books, and records available to the department for inspection and audit under 16-12-210 during
12 normal business hours.

13 (5) An adult-use provider or adult-use marijuana-infused products provider may not allow a person;

14 (a) under 18 years of age to volunteer or work for the licensee; or

15 (b) who has been convicted of a criminal offense involving drug possession in the past 10 years to
16 volunteer or work for the licensee.

17 (6) Edible marijuana-infused candy may not be sold in shapes or packages that are attractive to
18 children or that are easily confused with commercially sold candy that does not contain marijuana.

19 (7) (a) Marijuana or a marijuana-infused product must be sold or otherwise transferred in resealable,
20 child-resistant packaging designed to be significantly difficult for children under 5 years of age to open and not
21 difficult for adults to use properly.

22 (b) Subsection (7)(a) does not apply to marijuana consumed on the premises where it is sold, if
23 permitted by department rule.

24 (8) An adult-use provider, adult-use marijuana-infused products provider, or adult-use dispensary may
25 not sell marijuana, marijuana concentrates, or marijuana-infused products that contain greater than 15%
26 tetrahydrocannabinol by total weight.

27 ~~(8)(9)~~ (9) An adult-use provider, ~~or~~ adult-use marijuana-infused products provider, or adult-use
28 dispensary may not sell or otherwise transfer tobacco or alcohol from a registered premises or operate at a

1 shared location with a business that holds any alcohol license under Title 16, including but not limited to a
 2 license relating to the manufacture, retail, or wholesale of alcohol."

3
 4 **NEW SECTION. Section 9. Limit on adult-use dispensary licenses for each county.** The number
 5 of adult-use dispensaries that may operate in a county must be determined by population according to the most
 6 recent federal decennial census, as follows:

7 (1) in a county with a population of fewer than 10,000 inhabitants, not more than one adult-use
 8 dispensary; and

9 (2) in a county with a population of more than 10,000 inhabitants, not more than one additional adult-
 10 use dispensary for each additional 10,000 inhabitants or major fraction of 10,000 inhabitants.

11

12 **Section 10.** Section 39-2-313, MCA, is amended to read:

13 **"39-2-313. Discrimination prohibited for use of lawful product during nonworking hours --**
 14 **exceptions.** (1) For purposes of this section, "lawful product" means a product that is legally consumed, used,
 15 or enjoyed and includes food, beverages, ~~and tobacco,~~ and marijuana.

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

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

21 (a) use of a lawful product, ~~including the use of marijuana for a debilitating medical condition as~~
 22 ~~defined in 50-46-302,~~ that:

23 (i) affects in any manner an individual's ability to perform job-related employment responsibilities or
 24 the safety of other employees; or

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

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

1 use of certain products; or

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

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

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

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

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

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

16
17 **NEW SECTION. Section 11. Codification instruction.** [Section 9] is intended to be codified as an
18 integral part of Title 16, chapter 12, part 3, and the provisions of Title 16, chapter 12, part 3, apply to [section 9].

19 - END -