

1 HOUSE BILL NO. 128
2 INTRODUCED BY J. KASSMIER
3 BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MARIJUANA LAWS; REVISING
6 REPORTS TO THE LEGISLATURE; CLARIFYING PERMISSIVE ACTS AND EXCEPTIONS FOR
7 REGISTERED CARDHOLDERS; CLARIFYING LIMITATIONS OF THE MONTANA MARIJUANA
8 REGULATION AND TAXATION ACT; CLARIFYING PENALTIES; REVISING PENALTIES FOR SUSPENDED
9 LICENSES; COMBINING SECTIONS ON LEGISLATIVE MONITORING; CLARIFYING LEGISLATIVE
10 MONITORING DUTIES; REMOVING THE IDENTITY DISCLOSURE REQUIREMENT FOR LICENSEE
11 COMPLAINTS; REMOVING OUTDATED DATES; REMOVING THE BACKGROUND CHECK REQUIREMENT
12 FOR CERTAIN INDIVIDUALS; EXTENDING THE MORATORIUM FOR NEW MARIJUANA LICENSES;
13 TRANSFERRING AUTHORITY OVER MARIJUANA TESTING LABORATORIES; CLARIFYING THE
14 MINIMUM AGE TO ENTER A MARIJUANA BUSINESS; CLARIFYING LEGISLATIVE INTENT ON A
15 CULTIVATOR'S ABILITY TO INCREASE TIERS; REVISING REQUIREMENTS FOR A COMBINED-USE
16 LICENSE; REVISING REPORTING REQUIREMENTS FOR EMPLOYEE CONVICTIONS OR VIOLATIONS;
17 COMBINING SECTIONS ON FRAUDULENT REPRESENTATION; CLARIFYING THE FORMULA FOR
18 MUNICIPAL TAX REVENUE ALLOCATION; REMOVING CONFLICTING NOTICE REQUIREMENTS;
19 EXTENDING RULEMAKING AUTHORITY; REVISING DEFINITIONS; PROVIDING AN APPROPRIATION;
20 AMENDING SECTIONS 5-11-222, 15-64-101, 16-12-102, 16-12-104, 16-12-106, 16-12-108, 16-12-109, 16-12-
21 110, 16-12-125, 16-12-129, 16-12-201, 16-12-202, 16-12-203, 16-12-206, 16-12-207, 16-12-208, 16-12-209,
22 16-12-210, 16-12-222, 16-12-223, 16-12-225, 16-12-226, 16-12-301, 16-12-302, 16-12-310, 16-12-311, 16-12-
23 508, AND 20-1-220, MCA; REPEALING SECTIONS 16-12-524 AND 16-12-532, MCA; AND PROVIDING
24 EFFECTIVE DATES."
25

26 WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony
27 relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act; and

28 WHEREAS, specifically, the committee received testimony that section 16-12-223, MCA, allowed only

(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 license; and

(f) a person designated by the applicant as responsible for operating the licensed establishment on behalf of the licensee.

~~(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 January 1, 2022, shall undergo a criminal background check within 90 days of January 1, 2022.~~

~~(4)(3)~~ The department may establish procedures for obtaining fingerprints for the fingerprint-based and name-based background checks required under this section."

Section 11. Section 16-12-201, MCA, is amended to read:

"16-12-201. Licensing of cultivators, manufacturers, and dispensaries. (1) (a) Between January 1, 2022, and ~~June 30, 2023~~ June 30, 2025 June 30, 2023, the department may only accept applications from and issue licenses to former medical marijuana licensees that were licensed by or had an application pending with the department of public health and human services on ~~November 3, 2020~~ April 27, 2021, and are in good standing with the department and in compliance with this chapter, rules adopted by the department, and any applicable local regulations or ordinances as of January 1, 2022.

(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~~ July 1, 2025 July 1, 2023.

(2) (a) 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.

(b) Beginning January 1, 2022, a former medical marijuana licensee may sell marijuana and marijuana products to registered cardholders at the medical tax rate set forth in 15-64-102 and to consumers at the adult-use marijuana tax rate set forth in 15-64-102 under the licensee's existing license in a jurisdiction that

allows for the operation of marijuana businesses pursuant to 16-12-301 until the former medical marijuana licensee's next license renewal date, 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.

(c) (i) Except as provided in subsection (2)(c)(ii), for the purpose of this subsection (2), "appropriate licensure" means a cultivator license, medical marijuana dispensary license, adult-use dispensary license, and, if applicable, a manufacturer license.

(ii) A former medical marijuana licensee who sells marijuana and marijuana products exclusively to registered cardholders is not required to obtain an adult-use dispensary 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 12. Section 16-12-202, MCA, is amended to read:

"16-12-202. Testing laboratories -- licensing -- inspection -- ~~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) (a) The ~~state laboratory~~ department shall endorse a testing 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~~ department shall inspect a testing laboratory before endorsing a testing laboratory for licensure or renewal and may not endorse a testing laboratory for licensure or renewal if the applicant does not meet the requirements of 16-12-206 and this section.

1 registered cardholders only and may not make deliveries of marijuana or marijuana products to individual
2 consumers.

3 (8) A person delivering marijuana or marijuana products for a marijuana transporter must possess
4 a valid marijuana worker permit provided for under 16-12-226 and be a current employee of the marijuana
5 transporter licensee."
6

7 **Section 20.** Section 16-12-223, MCA, is amended to read:

8 **"16-12-223. Licensing of cultivators.** (1) (a) The department shall license cultivators according to a
9 tiered canopy system. Except as provided in subsection (6), all cultivation that is licensed under this chapter
10 may only occur at an indoor cultivation facility.

11 (b) Except as provided in subsection (6), the system ~~shall~~ must include, at a minimum, the
12 following license types:

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

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

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

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

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

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

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

27 (viii) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five indoor
28 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.

(xii) A tier 11 canopy license allows for a canopy of up to 40,000 square feet at up to eight indoor cultivation facilities.

(xiii) A tier 12 canopy license allows for a canopy of up to 50,000 square feet at up to nine indoor cultivation facilities.

(c) A cultivator shall demonstrate that the local government approval provisions in 16-12-301 have been satisfied for the jurisdiction where each proposed indoor cultivation facility or facilities is or will be located if a proposed facility would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

(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) (i) Except as provided in subsection (1)(e)(iii), a cultivator who has reached capacity under the existing license may apply to advance to the next licensing tier in conjunction with a regular renewal application by demonstrating that:

(A) the cultivator is using the full amount of canopy currently authorized;

(B) the tracking system shows the cultivator is selling at least 80% of the marijuana produced by the square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can otherwise demonstrate to the department that there is a market for the marijuana it seeks to produce; and

(C) 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 or that they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

(ii) Except as provided in subsection (1)(e)(iii), the department may increase a licensure level by

1 only one tier at a time.

2 (iii) Between January 1, 2022, and ~~June 30, 2023~~ June 30, 2025 ~~June 30, 2023~~, a cultivator may,
3 at any time, increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without
4 meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).

5 (iv) The department shall conduct an inspection of the cultivator's registered premises and
6 proposed premises within 30 days of receiving the application and before approving the application.

7 (f) A marijuana business that has not been issued a license before ~~July 1, 2023~~ July 1, 2025 ~~July~~
8 1, 2023, must be initially licensed at a tier 2 canopy license or lower.

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

10 (3) The department may adopt rules:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (l) \$32,000 for a cultivator with a tier 11 canopy license; and

1 (m) \$37,000 for a cultivator with a tier 12 canopy license.

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

4 (6) A former medical marijuana licensee who engaged in outdoor cultivation before November 3,
5 2020, may continue to engage in outdoor cultivation."
6

7 **Section 21.** Section 16-12-225, MCA, is amended to read:

8 **"16-12-225. Combined-use marijuana licensing -- requirements.** (1) The department may issue a
9 total of eight combined-use marijuana licenses to entities that are:

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

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

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

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

17 ~~(a) within 150 air miles of the exterior boundary of the associated tribal reservation or, for the Little~~
18 ~~Shell-Chippewa tribe only, within 150 air miles of the tribal service area; and~~

19 ~~(b) in a county that has satisfied the local government approval provisions in 16-12-301 if the majority~~
20 ~~of voters in the county voted against approval of Initiative Measure No. 190 in the November 3, 2020, general~~
21 ~~election.~~

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

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

27 (6) After a tribe or a majority-owned business of that tribe is licensed under this section, that tribe
28 or another majority-owned business of that tribe may not obtain another combined-use license until the prior