

Amendment - 2nd Reading-yellow - Requested by: Tanner Smith - (H) Committee of the Whole

68th Legislature

Drafter: Erin Sullivan, 406-444-3594

HB0128.003.001

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11 COMPLAINTS; REMOVING OUTDATED DATES; REMOVING THE BACKGROUND CHECK REQUIREMENT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

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17-7-138, 17-7-139, 17-7-140, 19-2-405, 19-2-407, 19-3-117, 19-20-201, 19-20-216, 20-7-101, 23-7-202, 33-1-115, and 39-71-2375 must be provided as soon as the report is published and publicly available. Reports required in subsections (2)(a), ~~(2)(gg)~~ (2)(ff), ~~(2)(hh)~~ (2)(gg), and (3)(b)(ix) must be provided following issuance of reports issued under Title 5, chapter 13."

Section 2. 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.

~~(2) "Customer" means a person to whom a sale of marijuana or a marijuana product is made.~~

~~(2)(3)~~ "Department" means the department of revenue provided for in 2-15-1301.

~~(3)(4)~~ "Dispensary" means an adult-use dispensary or a medical marijuana dispensary.

~~(4)(5)~~ "Licensee" means a licensee operating an adult-use dispensary or a medical marijuana dispensary.

~~(5)(6)~~ "Marijuana" has the meaning provided in 16-12-102.

~~(6)(7)~~ "Marijuana product" has the meaning provided in 16-12-102.

~~(7)(8)~~ "Medical marijuana dispensary" has the meaning provided in 16-12-102.

~~(8)(9)~~ "Person" means an individual, firm, partnership, corporation, association, company, committee, other group of persons, or other business entity, however formed.

~~(9) "Purchaser" means a person to whom a sale of marijuana or a marijuana product is made.~~

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

(11) "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 3. Section 16-12-102, MCA, is amended to read:

"16-12-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Adult-use dispensary" means a licensed premises from which a person licensed by the

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1 department may:

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

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

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

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

10 (4) "Canopy" means the total amount of square footage dedicated to live plant production at a
11 licensed premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

12 (5) "Consumer" means a person 21 years of age or older who obtains or possesses marijuana or
13 marijuana products for personal use from a licensed dispensary but not for resale.

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

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

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

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

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

24 or

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

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

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(8) "Correctional facility or program" means a facility or program that is described in 53-1-202(2) or (3) 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.

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

(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.

(13) (a) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or

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indirectly through a business, an investment, or a spouse, parent, or child relationship, to 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 or had an application for licensure pending with the department of public health and human services to provide marijuana to individuals with debilitating medical conditions on ~~November 3, 2020~~ ~~April 27, 2021~~ ~~DECEMBER 31, 2021~~ November 3, 2020.

(15) (a) "Indoor cultivation facility" means an enclosed area used to grow live plants that is within a permanent structure using artificial light exclusively or to supplement natural sunlight.

(b) The term may include:

(i) a greenhouse;

(ii) a hoop house; or

(iii) a similar structure that protects the plants from variable temperature, precipitation, and wind.

(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.

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

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

(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.

(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

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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.

(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.

(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 other marijuana products.

(24) "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, tinctures, marijuana derivatives, and marijuana concentrates, including concentrates intended for use by smoking or vaping.

(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.

(26) "Mature marijuana plant" means a harvestable marijuana plant.

(27) "Medical marijuana" means marijuana or marijuana products that are for sale solely to a cardholder who is registered under Title 16, chapter 12, part 5.

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

(29) "Outdoor cultivation" means live plants growing in an area exposed to natural sunlight and

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environmental conditions including variable temperature, precipitation, and wind.

(30) "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.

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

(32) "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.

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

(34) "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.

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

(36) "Registry identification card" means a document issued by the department pursuant to 16-12-503 that identifies an individual as a registered cardholder.

(37) (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.

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

~~(39) "State laboratory" means the laboratory operated by the department of public health and human services to conduct environmental analyses.~~

~~(40)~~(39) "Testing laboratory" 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.

~~(41)~~(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. (Subsection (15)(b)(ii) terminates October 1, 2023--sec. 117(1), Ch. 576, L. 2021.)"

Section 4. Section 16-12-104, MCA, is amended to read:

"16-12-104. 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:

(i) cultivator license;

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(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 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, 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 DECEMBER 31, 2021 November 3, 2020, and are in good standing with the department and in compliance with this chapter, rules

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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.

(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