

1 HOUSE BILL NO. 948

2 INTRODUCED BY S. GALLOWAY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING MARIJUANA LAWS; PROHIBITING THE
5 MANUFACTURE AND DISTRIBUTION OF SYNTHETIC MARIJUANA PRODUCTS; PROVIDING
6 DEFINITIONS; PROVIDING FOR ENFORCEMENT BY DEPARTMENTS AND LAW ENFORCEMENT;
7 PROVIDING FOR RESTRICTIONS BY LOCAL GOVERNMENTS; CLARIFYING UNLAWFUL
8 TRANSACTIONS REGARDING THE DISTRIBUTION OF SYNTHETIC MARIJUANA PRODUCTS TO
9 CHILDREN; CLARIFYING THE OFFENSE OF ALTERING A LABEL ON DANGEROUS DRUGS; REQUIRING
10 PUBLIC REPORTING OF VIOLATIONS; CREATING A TEMPORARY ADVISORY COUNCIL; ESTABLISHING
11 REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 16-12-101, 16-
12 12-102, 16-12-108, 16-12-125, 16-12-208, 45-5-623, 45-9-105, 50-32-222, AND 80-18-101, MCA; AND
13 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 NEW SECTION. **Section 1. Synthetic marijuana products prohibited -- restriction on sale of**
18 **marijuana products.** (1) A person may not manufacture, process, or offer for sale a synthetic marijuana
19 product.

20 (2) Products containing or consisting of cannabinoids produced and processed for any type of
21 consumption into a human body, whether marketed as containing or consisting of cannabinoids or not, that
22 exceed a THC concentration of 0.3% may only be sold by a manufacturer licensed under 16-12-222 or a
23 dispensary licensed under 16-12-224 unless the products are authorized as a drug by the United States food
24 and drug administration. Products under this section may not exceed the potency levels established in 16-12-
25 224.

26 (3) Products containing a THC concentration of 0.3% or less sold by any person other than a
27 licensed manufacturer under 16-12-222 or a licensed dispensary under 16-12-224 ~~must contain at least a 20:1~~
28 ~~ratio of cannabidiol or other non-THC cannabinoids to THC and~~ may not exceed 2-0.5 milligrams of THC for

1 each serving and may not exceed 2 milligrams per package.

2 (4) This section does not apply to unadulterated hemp flower that is not further processed into
3 extracts, infused products, or concentrates.

4
5 **NEW SECTION. Section 2. Enforcement -- ordinances -- investigations -- injunctions --**
6 **violation.** (1) A local government may, by ordinance or otherwise, impose regulations regarding products under
7 [section 1(1) and (3)].

8 (2) The department of agriculture, the department of justice, the department of public health and
9 human services, local sheriff departments, municipal police departments, a county attorney's office, and the
10 department of revenue may inspect any business to investigate unlawful activity under [section 1(1)].

11 (3) (a) If an investigation results in reasonable cause to believe that a violation of [section 1]
12 occurred, the investigating agency may issue a cease and desist order to be served pursuant to Rule 4,
13 M.R.Civ.P. The order is effective upon service. Proof of service constitutes notice to the person of the existence
14 and contents of the order.

15 (b) The investigating agency may assess a penalty of not more than \$1,000 per day for each day a
16 cease and desist order issued under this section is violated. Fifty percent of the penalty must be deposited into
17 the healing and ending addiction through recovery and treatment account under 16-12-122, and the remainder
18 must be deposited in the marijuana state special revenue account under 16-12-111.

19 (4) (a) The investigating agency may institute and maintain in the name of the state an action for
20 injunction or another civil remedy in district court to enforce a cease and desist order under this section. Proof
21 of inadequacy of a legal remedy or proof of substantial or irreparable damage from continued violation is not
22 required. It is sufficient to charge that the person engaged in the unlawful conduct subject to [section 1] on a
23 certain day in a certain county without averring further or more particular facts concerning the violation.

24 (b) The department is entitled to its costs, including the costs of investigation and attorney fees,
25 incurred in seeking a district court order under this section.

26 (c) A person who knowingly or purposely violates a district court injunction under this section is
27 guilty of a felony and subject to the penalties set forth in 46-18-213.

28 (5) An officer, agent, partner, or member of a business entity who knowingly and personally

1 participates in a violation of this section is subject to the penalties prescribed in this section.

2 (6) The remedies provided for in this section are in addition to and do not limit the remedies and
3 actions otherwise permitted or required by law.

4 ~~(3)~~(7) A violation of [section 1(1)] may be enforced under:

- 5 (a) criminal distribution of dangerous drugs as defined in 45-9-101;
- 6 (b) criminal possession of dangerous drugs as defined in 45-9-102; or
- 7 (c) criminal production or manufacture of dangerous drugs as defined in 45-9-110.

8
9 **NEW SECTION. Section 3. Synthetic marijuana products advisory council.** (1) The department
10 of revenue shall establish a synthetic marijuana products advisory council in accordance with 2-15-122 that is
11 composed of the following members:

- 12 (a) one member from the department of agriculture;
- 13 (b) one member from the department of justice;
- 14 (c) one member from the department of public health and human services;
- 15 (d) one member from the department of revenue;
- 16 (e) one member from the board of pharmacy;
- 17 (f) two members from the marijuana industry; and
- 18 (g) one public member. The public member must have expertise in:
 - 19 (i) toxicology;
 - 20 (ii) organic chemistry; or
 - 21 (iii) regulatory affairs in nutraceutical, pharmaceutical, or dietary supplements.
- 22 (2) The department shall provide staff and support services for the advisory council.
- 23 (3) Members are entitled to reimbursement for travel expenses as provided in 2-18-501 through 2-
24 18-503.
- 25 (4) The advisory council shall review available research, data, and regulations of other jurisdictions
26 related to synthetic marijuana products, including but not limited to:
 - 27 (a) definitions of the term "impairing" in relation to cannabinoids, as well as definitions of the terms
28 "artificial cannabinoids" and "synthetically derived cannabinoids"; and

1 discrimination pursuant to 49-1-102.

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

8 (6) A licensee who violates 15-64-103 or 15-64-104 or fails to pay any other taxes owed to the
9 department under Title 15 is subject to revocation of the person's license from the date of the violation until a
10 period of up to 1 year after the department certifies compliance with 15-64-103 or 15-64-104.

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

13

14 **Section 7.** Section 16-12-125, MCA, is amended to read:

15 **"16-12-125. Hotline -- reporting -- referrals.** (1) The department shall create and maintain a hotline
16 to receive reports of suspected abuse of the provisions of this chapter.

17 (2) An individual making a complaint must be a resident and shall provide the individual's name,
18 street address, and phone number.

19 (3) (a) The department shall provide a copy of the complaint to the person or licensee that is the
20 subject of the complaint.

21 (b) The department may not redact the individual's name or city of residence from the complaint
22 copy.

23 (4) The department may:

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

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

27 (5) The department shall make available to the public complaints about violations of [section 1(3)],
28 including:

1 (a) information regarding the types of businesses or products being reported; and

2 (b) any disciplinary action taken against a person in violation of [section 1(3)].

3 (6) The department reports made to the legislature pursuant to 16-12-110 must include the
4 number of investigations and complaints the department referred to law enforcement and the complaints'
5 disposition."

6

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

8 **"16-12-208. Restrictions.** (1) A cultivator or manufacturer may not cultivate marijuana or manufacture
9 marijuana products in a manner that is visible from the street or other public area without the use of binoculars,
10 aircraft, or other optical aids.

11 (2) A cultivator or manufacturer may not cultivate, process, test, or store marijuana at any location
12 other than the licensed premises approved by the department and within an enclosed area that is secured in a
13 manner that prevents access by unauthorized persons.

14 (3) A licensee shall make the licensed premises, books, and records available to the department
15 for inspection and audit under 16-12-210 during normal business hours.

16 (4) A licensee may not allow a person under 18 years of age to volunteer or work for the licensee.

17 (5) Edible marijuana products manufactured as candy may not be sold in shapes or packages that
18 are attractive to children or that are easily confused with commercially sold candy that does not contain
19 marijuana.

20 (6) (a) Marijuana or marijuana products must be sold or otherwise transferred in resealable, child-
21 resistant exit packaging that complies with federal child resistance standards and is designed to be significantly
22 difficult for children under 5 years of age to open and not difficult for adults to use properly.

23 (b) (i) Packaging of individual products may contain only the following design elements and
24 language on a white label:

25 (A) the seller's business name and any accompanying logo or design mark;

26 (B) the name of the product; and

27 (C) the THC content or CBD content, health warning messages as provided in 16-12-215, and
28 ingredients.

1 (ii) All packaging and outward labeling, including business logos and design marks, must also
2 comply with any standards or criteria established by the department, including but not limited to allowable
3 symbols and imagery.

4 (7) An adult-use dispensary or medical marijuana dispensary may not sell or otherwise transfer
5 hemp flower, hemp plants, synthetic cannabinoids, or alcohol from a licensed premises.

6 (8) (a) Prior to selling, offering for sale, or transferring marijuana or marijuana product that is for
7 ultimate sale to a consumer or registered cardholder, a licensee or license applicant shall submit both a
8 package and a label application, in a form prescribed by the department, to receive approval from the
9 department.

10 (b) The initial submission must be made electronically if required by the department. The licensee
11 or license applicant shall submit a physical prototype upon request by the department.

12 (c) If a license applicant submits packages and labels for preapproval, final determination for
13 packages and labels may not be made until the applicant has been issued a license.

14 (d) A packaging and label application must include:

15 (i) a fee provided for in rule by the department;

16 (ii) documentation that all exit packaging has been certified as child-resistant by a federally
17 qualified third-party child-resistant package testing firm;

18 (iii) a picture or rendering of and description of the item to be placed in each package; and

19 (iv) for label applications for inhalable marijuana products that contain nonmarijuana additives:

20 (A) the nonmarijuana additive's list of ingredients; and

21 (B) in a form and manner prescribed by the department, information regarding the additive or
22 additives and the manufacturer of the additive or additives.

23 (9) For the purpose of this section, "exit packaging" means a sealed, child-resistant certified
24 receptacle into which marijuana or marijuana products already within a container are placed at the retail point of
25 sale."

26

27 **Section 9.** Section 45-5-623, MCA, is amended to read:

28 **"45-5-623. Unlawful transactions with children.** (1) Except as provided for in 16-6-305, a person