

1 SENATE BILL NO. 463

2 INTRODUCED BY J. TREBAS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ALCOHOL,
5 MARIJUANA, AND TOBACCO; REVISING THE DEFINITION OF "MARIJUANA"; REVISING FINES FOR
6 BOTTLE CLUBS ~~AND VIOLATIONS OF THE CLEAN INDOOR AIR ACT; PROVIDING A DEFINITION;~~ AND
7 AMENDING SECTIONS 16-6-306, 16-12-102, AND ~~50-40-115~~ 50-40-103, MCA."

8

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

10

11 Section 1. Section 16-6-306, MCA, is amended to read:

12 "16-6-306. **Bottle clubs prohibited.** (1) The operation of alcoholic beverage bottle clubs is prohibited
13 by any individual or entity. A bottle club is defined as any individual or entity maintaining, operating, or leasing
14 premises not licensed for the sale of alcoholic beverages in which alcoholic beverages are kept for
15 consumption by members of the public or for the purpose of providing a place for consuming alcoholic
16 beverages by members of the public for a fee or other consideration. A bottle club does not include a private
17 member club in which members store and consume alcohol at the private member club and that does not have
18 employees or conduct any unlicensed alcoholic beverage sales. For the purposes of this subsection,
19 "consideration" includes but is not limited to a cover charge, the sale of food, ice, mixers, or any other fluids for
20 alcoholic beverages, the furnishing of glassware or other containers for use in the consumption of alcoholic
21 beverages, or the expectation of a purchase of a good or service. The term "consideration" does not include
22 membership dues or fees for a private member club.

23 (2) Nothing in this section prevents the service or consumption of alcoholic beverages at private
24 gatherings. For the purposes of this subsection, "private gathering" means an event hosted by an individual that
25 is not open to the general public and in which no fee or consideration is charged. The term does not include an
26 event catered by a licensed retailer.

27 (3) Nothing in this section prohibits a licensed on-premises retailer or concessionaire from opening
28 and serving to patrons 21 years of age or older wine from a sealed bottle brought to the premises by the patron

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1 for on-premises consumption. This service may not constitute a violation of 16-3-301 or this section, regardless
2 of whether the licensed retailer charges a corkage fee.

3 (4) The department may assess a fine of up to \$500 against individuals or entities serving
4 alcoholic beverages or allowing consumption of alcoholic beverages in violation of subsection (1) without a
5 license or special permit."

6

7 **Section 2.** Section 16-12-102, MCA, is amended to read:

8 **"16-12-102. Definitions.** As used in this chapter, the following definitions apply:

9 (1) "Adult-use dispensary" means a licensed premises from which a person licensed by the
10 department may:

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

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

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

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

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

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

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

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

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

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1 publicly traded corporation, and:

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

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

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

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

9 (8) "Correctional facility or program" means a facility or program that is described in 53-1-202(2) or
10 (3) and to which an individual may be ordered by any court of competent jurisdiction.

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

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

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

15 (10) "Debilitating medical condition" means:

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

19 (b) cachexia or wasting syndrome;

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

22 (d) intractable nausea or vomiting;

23 (e) epilepsy or an intractable seizure disorder;

24 (f) multiple sclerosis;

25 (g) Crohn's disease;

26 (h) painful peripheral neuropathy;

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

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

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1 (k) posttraumatic stress disorder.

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

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

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

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

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

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

12 (14) "Former medical marijuana licensee" means a person that was licensed by or had an
13 application for licensure pending with the department of public health and human services to provide marijuana
14 to individuals with debilitating medical conditions on November 3, 2020.

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

17 (b) The term may include:

18 (i) a greenhouse;

19 (ii) a hoop house; or

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

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

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

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

27 (19) "Manufacturer" means a person licensed by the department to convert or compound marijuana
28 into marijuana products, marijuana concentrates, or marijuana extracts and package, repackage, label, or

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1 relabel marijuana products as allowed under this chapter.

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

4 (b) The term does not include hemp, including any part of that plant, including the seeds and all
5 derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a
6 delta-8 or delta-9 tetrahydrocannabinol concentration, including synthetic delta-8 or delta-9
7 tetrahydrocannabinol of not more than 0.3% on a dry weight basis, or commodities or products manufactured
8 with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food,
9 drink, or other products.

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

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

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

17 (23) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, or
18 byproducts of the marijuana plant, including but not limited to marijuana concentrates and other marijuana
19 products.

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

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

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

28 (27) "Medical marijuana" means marijuana or marijuana products that are for sale solely to a

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1 cardholder who is registered under Title 16, chapter 12, part 5.

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

4 (29) "Outdoor cultivation" means live plants growing in an area exposed to natural sunlight and
5 environmental conditions including variable temperature, precipitation, and wind.

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

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

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

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

15 (34) "Qualified institutional investor" means:

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

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

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

25 (d) an investment company registered under section 8 of the federal Investment Company Act of
26 1940, as amended;

27 (e) an employee benefit plan or pension fund subject to the federal Employee Retirement Income
28 Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a licensee or an

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1 intermediary holding company licensee that directly or indirectly owns 10% or more of a licensee;

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

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

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

6 (36) "Registry identification card" means a document issued by the department pursuant to 16-12-
7 503 that identifies an individual as a registered cardholder.

8 (37) (a) "Resident" means an individual who meets the requirements of 1-1-215.

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

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

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

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

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

16 (40) "Testing laboratory" means a qualified person, licensed under this chapter that:

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

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

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

22 (b) The term does not include the seeds, stalks, and roots of the plant. (Subsection (15)(b)(ii)
23 terminates October 1, 2023--sec. 117(1), Ch. 576, L. 2021.)"

24

25 **Section 3.** Section 50-40-103, MCA, is amended to read:

26 **"50-40-103. Definitions.** As used in this part, the following definitions apply:

27 (1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is
28 devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the

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1 serving of food is only incidental to the service of alcoholic beverages or gambling operations. The term
2 includes but is not limited to taverns, night clubs, cocktail lounges, and casinos.

3 (2) "Department" means the department of public health and human services provided for in 2-15-
4 2201.

5 (3) "Enclosed public place" means an indoor area, room, or vehicle that the general public is
6 allowed to enter or that serves as a place of work, including but not limited to the following:

7 (a) restaurants;

8 (b) stores;

9 (c) public and private office buildings and offices, including all office buildings and offices of
10 political subdivisions, as provided for in 50-40-201, and state government;

11 (d) trains, buses, and other forms of public transportation;

12 (e) health care facilities;

13 (f) auditoriums, arenas, and assembly facilities;

14 (g) meeting rooms open to the public;

15 (h) bars;

16 (i) community college facilities;

17 (j) facilities of the Montana university system; and

18 (k) public schools, as provided for in 20-1-220 and 50-40-104.

19 (4) "Enclosed room" means an area with a wall on all sides reaching from floor to ceiling, exclusive
20 of windows and doors, and does not include an area completely or partially open to the outside air such as a
21 roofed shelter.

22 ~~(4)~~(5) "Establishment" means an enterprise under one roof that serves the public and for which a
23 single person, agency, corporation, or legal entity is responsible.

24 ~~(5)~~(6) "Incidental to the service of alcoholic beverages or gambling operations" means that at least
25 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts,
26 or both.

27 ~~(6)~~(7) "Person" means an individual, partnership, corporation, association, political subdivision, or
28 other entity.

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1 ~~(7)(8)~~ "Place of work" means an enclosed room where one or more individuals work.

2 ~~(8)(9)~~ "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar,
3 cigarette, pipe, or any smokable product and includes the use of marijuana."
4

5 **Section 3.** ~~Section 50-40-115, MCA, is amended to read:~~

6 ~~**"50-40-115. Penalties.** (1) It is unlawful for a person to smoke in any area where smoking is~~
7 ~~prohibited under 20-1-220 or 50-40-104. A person An establishment that fails to prohibit a person who violates~~
8 ~~20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more~~
9 ~~than \$100 \$50 that may be assessed only once a day.~~

10 ~~(2) A person who owns, manages, operates, or otherwise controls a public place or place of~~
11 ~~employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor after~~
12 ~~a third violation within a 3-year period and shall be warned, reprimanded, or punished as follows:~~

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

14 ~~(b) a written reprimand for a second violation; and~~

15 ~~(c) within any 3-year period, a fine of:~~

16 ~~(i) \$100 for a third violation;~~

17 ~~(ii) \$200 for a fourth violation; and~~

18 ~~(iii) \$500 for a fifth or subsequent violation.~~

19 ~~(3) Penalties imposed under this section may not be considered by the department of revenue for the~~
20 ~~purposes of 16-4-401 or by the department of justice for the purposes of 23-5-119, 23-5-177, or 23-5-611(1)(a)~~
21 ~~or (1)(c)."~~

22 - END -