

SENATE BILL NO. 546

INTRODUCED BY K. REGIER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO MARIJUANA;  
5 LIMITING THE PURCHASE OF MARIJUANA IN A DISPENSARY TO REGISTERED CARDHOLDERS;  
6 ELIMINATING ADULT-USE DISPENSARIES; REVISING THE TAX RATE FOR MEDICAL MARIJUANA;  
7 REVISING REGISTERED CARDHOLDER ANNUAL FEES; REVISING MARIJUANA POTENCY LIMITS;  
8 REDUCING THE NUMBER OF MARIJUANA PLANTS ALLOWED FOR PERSONAL CULTIVATION;  
9 REDUCING THE MONTHLY ALLOWANCE FOR REGISTERED CARDHOLDERS; CLARIFYING THE  
10 REFERENDUM PROCESS FOR LOCAL ELECTIONS ON MARIJUANA ISSUES; REVISING MARIJUANA  
11 REVENUE DISTRIBUTIONS; REMOVING THE ABILITY TO PROVIDE WRITTEN CERTIFICATION VIA  
12 TELEMEDICINE; CREATING A STATE SPECIAL REVENUE ACCOUNT; REVISING DEFINITIONS;  
13 PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 15-64-101, 15-64-102, 16-12-101, 16-  
14 12-102, 16-12-104, 16-12-105, 16-12-106, 16-12-108, 16-12-109, 16-12-111, 16-12-201, 16-12-202, 16-12-  
15 203, 16-12-207, 16-12-208, 16-12-209, 16-12-222, 16-12-224, 16-12-226, 16-12-301, 16-12-302, 16-12-310,  
16 16-12-311, 16-12-312, 16-12-502, 16-12-509, 16-12-515, 16-12-533, 33-22-138, 37-2-305, AND 37-3-102,  
17 MCA."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20  
21 **Section 1.** Section 15-64-101, MCA, is amended to read:

22 **"15-64-101. Definitions.** As used in this part, the following definitions apply:

23 ~~(1) "Adult-use dispensary" has the meaning provided in 16-12-102.~~

24 ~~(2)(1)~~ "Department" means the department of revenue provided for in 2-15-1301.

25 ~~(3)(2)~~ "Dispensary" means ~~an adult-use dispensary or~~ a medical marijuana dispensary.

26 ~~(4)(3)~~ "Licensee" means a licensee operating ~~an adult-use dispensary or~~ a medical marijuana  
27 dispensary.

28 ~~(5)(4)~~ "Marijuana" has the meaning provided in 16-12-102.

1           ~~(6)~~(5) "Marijuana product" has the meaning provided in 16-12-102.

2           ~~(7)~~(6) "Medical marijuana dispensary" has the meaning provided in 16-12-102.

3           ~~(8)~~(7) "Person" means an individual, firm, partnership, corporation, association, company, committee,  
4 other group of persons, or other business entity, however formed.

5           ~~(9)~~(8) "Purchaser" means a person to whom a sale of marijuana or a marijuana product is made.

6           ~~(10)~~(9) "Retail price" means the established price for which ~~an adult-use dispensary or a~~ medical  
7 marijuana dispensary sells marijuana or a marijuana product to a purchaser before any discount or reduction.

8           ~~(11)~~(10) "Sale" or "sell" means any transfer of marijuana or marijuana products for consideration,  
9 exchange, barter, gift, offer for sale, or distribution in any manner or by any means."

10

11           **Section 2.** Section 15-64-102, MCA, is amended to read:

12           "**15-64-102. Tax on marijuana sales.** (1) For a medical marijuana dispensary, there is a 4% 20% tax  
13 on the retail price of marijuana, and marijuana products, ~~and live marijuana plants~~ for use by individuals with  
14 debilitating medical conditions.

15           ~~(2) For an adult use dispensary, there is a 20% tax on the retail price of marijuana, marijuana~~  
16 ~~products, and live marijuana plants.~~

17           ~~(3)~~(2) The ~~taxes tax~~ set forth in ~~subsections (1) and (2) are~~ subsection (1) is imposed on the  
18 purchaser and must be collected at the time of the sale and paid by the seller to the department for deposit in  
19 the marijuana state special revenue account provided for in 16-12-111.

20           ~~(4)~~(3) A dispensary licensed under Title 16, chapter 12, shall submit a quarterly report to the  
21 department listing the total dollar amount of sales. The report must be:

22           (a) made on forms prescribed by the department; and

23           (b) submitted within 15 days of the end of each calendar quarter.

24           ~~(5)~~(4) At the time the report is filed, the dispensary shall submit a payment equal to the percentage  
25 provided in subsection (1) ~~or (2)~~ of the total dollar amount of sales.

26           ~~(6)~~(5) The department shall deposit the taxes paid under this section in the state special revenue  
27 account provided for in 16-12-111 within the state special revenue fund established in 17-2-102.

28           ~~(7)~~(6) The tax imposed by this part and related interest and penalties are a personal debt of the

1 person required to file a return from the time that the liability arises, regardless of when the time for payment of  
2 the liability occurs.

3 ~~(8)(7)~~ For the purpose of determining liability for the filing of statements and the payment of taxes,  
4 penalties, and interest owed under 15-64-103 through 15-64-106:

5 (a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state  
6 taxes provided for in 15-64-103 through 15-64-106 and who fails to pay the taxes is liable to the state for the  
7 taxes and the penalty and interest due on the amounts;

8 (b) each officer of the corporation, to the extent that the officer has access to the requisite records,  
9 is individually liable along with the corporation for filing statements and for unpaid taxes, penalties, and interest  
10 upon a determination that the officer:

11 (i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

12 (ii) possessed the responsibility on behalf of the corporation for directing the filing of statements or  
13 the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure  
14 to file statements required by this part or pay taxes due as required by this part;

15 (c) each partner of a partnership is jointly and severally liable, along with the partnership, for any  
16 statements, taxes, penalties, and interest due while a partner;

17 (d) each member of a limited liability company that is treated as a partnership or as a corporation  
18 for income tax purposes is jointly and severally liable, along with the limited liability company, for any  
19 statements, taxes, penalties, and interest due while a member;

20 (e) the member of a single-member limited liability company that is disregarded for income tax  
21 purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes,  
22 penalties, and interest due while a member; and

23 (f) each manager of a manager-managed limited liability company is jointly and severally liable,  
24 along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

25 ~~(9)(8)~~ In determining which corporate officer is liable, the department is not limited to considering the  
26 elements set forth in subsection ~~(8)(a)~~, (7)(a) to establish individual liability and may consider any other  
27 available information.

28 ~~(40)(9)~~ In the case of a bankruptcy, the liability of the individual remains unaffected by the discharge of

1 penalty and interest against the corporation. The individual remains liable for any statements and the amount of  
2 taxes, penalties, and interest unpaid by the entity.

3 ~~(14)~~(10) The tax levied pursuant to this section is separate from and in addition to any general state  
4 and local sales and use taxes that apply to retail sales, which must continue to be collected and distributed as  
5 provided by law.

6 ~~(12)~~(11) The tax levied under this section must be used as designated in 16-12-111."  
7

8 **Section 3.** Section 16-12-101, MCA, is amended to read:

9 **"16-12-101. Short title -- purpose.** (1) This chapter may be cited as the "Montana Marijuana  
10 Regulation and Taxation Act".

11 (2) The purpose of this chapter is to:

12 (a) provide for legal possession and use of limited amounts of marijuana legal for adults 21 years  
13 of age or older;

14 (b) provide for the licensure and regulation of the cultivation, manufacture, production, distribution,  
15 transportation, and sale of medical marijuana and marijuana products;

16 ~~(c) eliminate the illicit market for marijuana and marijuana products;~~

17 ~~(c) reduce the demand for marijuana sales;~~

18 (d) prevent the distribution of marijuana sold under this chapter to persons who are not registered  
19 cardholders and persons under 21 years of age;

20 (e) ensure the safety of medical marijuana and marijuana products;

21 (f) ensure the security of licensed premises;

22 (g) establish reporting requirements for licensees;

23 (h) establish inspection requirements for licensees, including data collection on energy use,  
24 chemical use, water use, and packaging waste to ensure a clean and healthy environment;

25 (i) provide for the testing of medical marijuana and marijuana products by licensed testing  
26 laboratories;

27 (j) give local governments authority to allow for the operation of marijuana businesses in their  
28 community and establishing standards for the cultivation, manufacture, and sale of medical marijuana that

1 protect the public health, safety, and welfare of residents within their jurisdictions;

2 (k) tax the sale of medical marijuana and marijuana products to provide compensation for the  
3 economic and social costs of marijuana;

4 (l) authorize courts to resentence persons who are currently serving sentences for acts that are  
5 permitted under this chapter or for which the penalty is reduced by this chapter and to redesignate or expunge  
6 those offenses from the criminal records of persons who have completed their sentences as set forth in this  
7 chapter; and

8 (m) preserve and protect Montana's well-established hemp industry by drawing a clear distinction  
9 between those participants and programs and the participants and programs associated with the marijuana  
10 industry.

11 (3) Marijuana and marijuana products are not agricultural products, and the cultivation, processing,  
12 manufacturing or selling of marijuana or marijuana products is not considered agriculture subject to regulation  
13 by the department of agriculture unless expressly provided."  
14

15 **Section 4.** Section 16-12-102, MCA, is amended to read:

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

17 ~~(1) "Adult use dispensary" means a licensed premises from which a person licensed by the~~  
18 ~~department may:~~

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

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

23 ~~(2)(1)~~ "Affiliate" means a person that directly, or indirectly through one or more intermediaries,  
24 controls or is controlled by, or is under common control with, another person.

25 ~~(3)(2)~~ "Beneficial owner of", "beneficial ownership of", or "beneficially owns an" is determined in  
26 accordance with section 13(d) of the federal Securities and Exchange Act of 1934, as amended.

27 ~~(4)(3)~~ "Canopy" means the total amount of square footage dedicated to live plant production at a  
28 licensed premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

1           ~~(5)~~(4) "Consumer" means a person 21 years of age or older who obtains or possesses marijuana or  
2 marijuana products for personal use ~~from a licensed dispensary but not for resale.~~

3           ~~(6)~~(5) "Control", "controls", "controlled", "controlling", "controlled by", and "under common control  
4 with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management or  
5 policies of a person, whether through the ownership of voting owner's interests, by contract, or otherwise.

6           ~~(7)~~(6) "Controlling beneficial owner" means a person that satisfies one or more of the following:

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

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

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

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

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

17           ~~(8)~~(7) "Correctional facility or program" means a facility or program that is described in 53-1-202(2) or  
18 (3) and to which an individual may be ordered by any court of competent jurisdiction.

19           ~~(9)~~(8) "Cultivator" means a person licensed by the department to:

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

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

23           ~~(10)~~(9) "Debilitating medical condition" means:

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

27           (b) cachexia or wasting syndrome;

28           (c) severe chronic pain that is a persistent pain of severe intensity that significantly interferes with

1 daily activities as documented by the patient's treating physician;

2 (d) intractable nausea or vomiting;

3 (e) epilepsy or an intractable seizure disorder;

4 (f) multiple sclerosis;

5 (g) Crohn's disease;

6 (h) painful peripheral neuropathy;

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

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

9 (k) posttraumatic stress disorder.

10 ~~(14)~~(10) "Department" means the department of revenue provided for in 2-15-1301.

11 ~~(12)~~(11) (a) "Employee" means an individual employed to do something for the benefit of an employer.

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

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

15 ~~(13)~~(12) (a) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or  
16 indirectly through a business, an investment, or a spouse, parent, or child relationship, to 5% or more of the net  
17 profits or net worth of the entity in which the interest is held.

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

20 ~~(14)~~(13) "Former medical marijuana licensee" means a person that was licensed by or had an  
21 application for licensure pending with the department of public health and human services to provide marijuana  
22 to individuals with debilitating medical conditions on November 3, 2020.

23 ~~(15)~~(14) (a) "Indoor cultivation facility" means an enclosed area used to grow live plants that is within a  
24 permanent structure using artificial light exclusively or to supplement natural sunlight.

25 (b) The term may include:

26 (i) a greenhouse;

27 (ii) a hoop house; or

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

1           ~~(16)~~(15) "Licensed premises" means all locations related to, or associated with, a specific license that  
2 is authorized under this chapter and includes all enclosed public and private areas at the location that are used  
3 in the business operated pursuant to a license, including offices, kitchens, restrooms, and storerooms.

4           ~~(17)~~(16) "Licensee" means a person holding a state license issued pursuant to this chapter.

5           ~~(18)~~(17) "Local government" means a county, a consolidated government, or an incorporated city or  
6 town.

7           ~~(19)~~(18) "Manufacturer" means a person licensed by the department to convert or compound  
8 marijuana into marijuana products, marijuana concentrates, or marijuana extracts and package, repackage,  
9 label, or relabel marijuana products as allowed under this chapter.

10           ~~(20)~~(19) (a) "Marijuana" means all plant material from the genus Cannabis containing  
11 tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

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

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

19           ~~(24)~~(20) "Marijuana business" means a cultivator, manufacturer, ~~adult-use dispensary~~, medical  
20 marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other  
21 business or function that is licensed by the department under this chapter.

22           ~~(22)~~(21) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of  
23 the resin extracted from any part of the marijuana plant.

24           ~~(23)~~(22) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, or  
25 byproducts of the marijuana plant, including but not limited to marijuana concentrates and other marijuana  
26 products.

27           ~~(24)~~(23) "Marijuana product" means a product that contains marijuana and is intended for use by a  
28 consumer or registered cardholder by a means other than smoking. The term includes but is not limited to



1 edible products, ointments, tinctures, marijuana derivatives, and marijuana concentrates.

2 ~~(25)~~(24) "Marijuana transporter" means a person that is licensed to transport marijuana and marijuana  
3 products from one marijuana business to another marijuana business, or to and from a testing laboratory, and  
4 to temporarily store the transported retail marijuana and retail marijuana products at its licensed premises, but  
5 is not authorized to sell marijuana or marijuana products to consumers or registered cardholders under any  
6 circumstances.

7 ~~(26)~~(25) "Mature marijuana plant" means a harvestable marijuana plant.

8 ~~(27)~~(26) "Medical marijuana" means marijuana or marijuana products that are for sale solely to a  
9 cardholder who is registered under Title 16, chapter 12, part 5.

10 ~~(28)~~(27) "Medical marijuana dispensary" means the location from which a registered cardholder may  
11 obtain marijuana or marijuana products.

12 ~~(29)~~(28) "Outdoor cultivation" means live plants growing in an area exposed to natural sunlight and  
13 environmental conditions including variable temperature, precipitation, and wind.

14 ~~(30)~~(29) "Owner's interest" means the shares of stock in a corporation, a membership in a nonprofit  
15 corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in  
16 a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a  
17 partnership, and the interest of a member in a limited partnership association.

18 ~~(31)~~(30) "Paraphernalia" has the meaning provided for "drug paraphernalia" in 45-10-101.

19 ~~(32)~~(31) "Passive beneficial owner" means any person acquiring an owner's interest in a marijuana  
20 business that is not otherwise a controlling beneficial owner or in control.

21 ~~(33)~~(32) "Person" means an individual, partnership, association, company, corporation, limited liability  
22 company, or organization.

23 ~~(34)~~(33) "Qualified institutional investor" means:

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

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

28 (c) a company organized as an insurance company whose primary and predominant business

1 activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and that is  
2 subject to regulation or oversight by the insurance department of the office of the state auditor or a similar  
3 agency of another state, or any receiver or similar official or any liquidating agent for such a company, in their  
4 capacity as such an insurance company;

5 (d) an investment company registered under section 8 of the federal Investment Company Act of  
6 1940, as amended;

7 (e) an employee benefit plan or pension fund subject to the federal Employee Retirement Income  
8 Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a licensee or an  
9 intermediary holding company licensee that directly or indirectly owns 10% or more of a licensee;

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

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

12 ~~(35)~~(34) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical  
13 condition who has received and maintains a valid registry identification card.

14 ~~(36)~~(35) "Registry identification card" means a document issued by the department pursuant to 16-12-  
15 503 that identifies an individual as a registered cardholder.

16 ~~(37)~~(36) (a) "Resident" means an individual who meets the requirements of 1-1-215.

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

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

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

20 ~~(38)~~(37) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height  
21 and 12 inches in diameter.

22 ~~(39)~~(38) "State laboratory" means the laboratory operated by the department of public health and  
23 human services to conduct environmental analyses.

24 ~~(40)~~(39) "Testing laboratory" means a qualified person, licensed under this chapter that:

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

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

28 ~~(44)~~(40) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant that are

1 appropriate for the use of marijuana by an individual.

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

4

5 **Section 5.** Section 16-12-104, MCA, is amended to read:

6 **"16-12-104. Department responsibilities -- licensure.** (1) The department shall establish and  
7 maintain a registry of persons who receive licenses under this chapter.

8 (2) (a) The department shall issue the following license types to persons who submit applications  
9 meeting the requirements of this chapter:

10 (i) cultivator license;

11 (ii) manufacturer license;

12 (iii) ~~adult-use dispensary license or a~~ medical marijuana dispensary license;

13 (iv) testing laboratory license.

14 (v) marijuana transporter license.

15 (vi) combined-use marijuana license.

16 (b) The department may establish other license types, subtypes, endorsements, and restrictions it  
17 considers necessary for the efficient administration of this chapter.

18 (3) A licensee may not cultivate hemp or engage in hemp manufacturing at a licensed premises.

19 (4) A person licensed to cultivate or manufacture marijuana or marijuana products is subject to the  
20 provisions contained in the Montana Pesticides Act provided for in Title 80, chapter 8.

21 (5) The department shall assess applications for licensure or renewal to determine if an applicant,  
22 controlling beneficial owner, or a person with a financial interest in the applicant meets any of the criteria  
23 established in this chapter for denial of a license.

24 (6) A license issued pursuant to this chapter must be displayed by the licensee as provided for in  
25 rule by the department.

26 (7) (a) The department shall review the information contained in an application or renewal  
27 submitted pursuant to this chapter and shall approve or deny an application:

28 (i) within 60 days of receiving the application or renewal and all related application materials from

1 a former medical marijuana licensee or an existing licensee under this chapter; and

2 (ii) within 120 days of receiving the application and all related application materials from a new  
3 applicant.

4 (b) If the department fails to act on a completed application within the time allowed under  
5 subsection (7)(a), the department shall:

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

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

9 (c) The department may not take final action on an application for a license or renewal of a license  
10 until the department has completed a satisfactory inspection as required by this chapter and related  
11 administrative rules.

12 (d) The department shall issue a license or endorsement within 5 days of approving an application  
13 or renewal.

14 (8) (a) Review of a rejection of an application or renewal may be conducted as a contested case  
15 hearing before the department's office of dispute resolution pursuant to the provisions of the Montana  
16 Administrative Procedure Act.

17 (b) A person may appeal any decision of the department of revenue concerning the issuance,  
18 rejection, suspension, or revocation of a license provided for by this chapter to the district court in the county in  
19 which the person operates or proposes to operate. If a person operates or seeks to operate in more than one  
20 county, the person may seek judicial review in the district court with jurisdiction over actions arising in any of the  
21 counties where it operates or seeks to operate.

22 (c) An appeal pursuant to subsection (8)(b) must be made by filing a complaint setting forth the  
23 grounds for relief and the nature of relief demanded with the district court within 30 days following receipt of  
24 notice of the department's final decision.

25 (9) Licenses issued under this chapter must be renewed annually.

26 (10) (a) The department shall provide the names and phone numbers of persons licensed under this  
27 chapter and the city, town, or county where licensed premises are located to the public on the department's  
28 website. Except as provided in subsection (10)(b), the department may not disclose the physical location or

1 address of a marijuana business.

2 (b) The department may share the physical location or address of a marijuana business with  
3 another state agency, political subdivision, and the state fire marshal.

4 (11) The department may not prohibit a cultivator, or manufacturer, ~~or adult-use dispensary~~ licensee  
5 operating in compliance with the requirements of this chapter from operating at a shared location with a medical  
6 marijuana dispensary.

7 ~~(12) The department may not adopt rules requiring a consumer to provide a licensee with identifying~~  
8 ~~information other than government-issued identification to determine the consumer's age. A licensee that scans~~  
9 ~~a person's driver's license using an electronic reader to determine the person's age:~~

10 ~~(a) may only use data or metadata from the scan to determine the person's age;~~

11 ~~(b) may not transfer or sell that data or metadata to another party; and~~

12 ~~(c) shall permanently delete any data or metadata from the scan within 180 days, unless otherwise~~  
13 ~~provided for in this chapter or by the department.~~

14 ~~(13)(12) (a) Except as provided in subsection (13) (b), licenses~~ Licenses issued by the department  
15 under this chapter are nontransferable.

16 ~~(b) A licensee may sell its marijuana business, including live plants, inventory, and material assets, to~~  
17 ~~a person who is licensed by the department under the provisions of this chapter. The department may, in its~~  
18 ~~discretion, issue a temporary license to the acquiring party to facilitate the transfer of the licensee's marijuana~~  
19 ~~business.~~

20 ~~(14)(13) A person who is not a controlling beneficial owner in a licensee may not receive or otherwise~~  
21 ~~obtain an ownership interest in a licensee that results in the person becoming a controlling beneficial owner~~  
22 ~~unless the licensee notifies, in writing, the department of the proposed transaction and the department~~  
23 ~~determines that the person qualifies for ownership under the provisions of this chapter."~~

24

25 **Section 6.** Section 16-12-105, MCA, is amended to read:

26 **"16-12-105. Department responsibility to monitor and assess marijuana production, testing,**  
27 **sales, and license revocation.** (1) (a) The department shall implement a system for tracking marijuana and  
28 marijuana products from either the seed or the seedling stage until it is sold to a ~~consumer~~ or registered

1 cardholder.

2 (b) The system must ensure that marijuana and marijuana products cultivated, manufactured,  
3 possessed, and sold under this chapter are not sold or otherwise provided to an individual who is ~~under 21~~  
4 ~~years of age unless that person is~~ not a registered cardholder.

5 (c) The system must be made available to licensees, except that licensees shall bear the  
6 responsibility and cost for procuring unique identification tracking tags to facilitate the tracking of marijuana and  
7 marijuana products.

8 (2) The department shall, if technology allows, require use of a mandatory semicashless payment  
9 system occurring at the point of sale for all dispensaries. ~~Adult-use dispensaries and medical~~ Medical marijuana  
10 dispensaries are required to utilize a semicashless point-of-sale system when selling marijuana and marijuana  
11 products to ~~consumers or~~ registered cardholders. The department may establish by rule the requirements,  
12 standards, and private company that a licensee must use when utilizing such a system in a dispensary. The  
13 semicashless processor is authorized to make deposits to an account specified by the department for tax  
14 collection.

15 (3) The department is authorized to share seed-to-sale information with the licensee's depository  
16 institution, any other government agency, or the semicashless processor."  
17

18 **Section 7.** Section 16-12-106, MCA, is amended to read:

19 **"16-12-106. Personal use and cultivation of marijuana -- penalties.** (1) Subject to the limitations in  
20 16-12-108, the following acts are lawful and may not be an offense under state law or the laws of any local  
21 government within the state, be a basis to impose a civil fine, penalty, or sanction, or be a basis to detain,  
22 search, or arrest, or otherwise deny any right or privilege, or to seize or forfeit assets under state law or the  
23 laws of any local government for a person who is 21 years of age or older:

24 (a) possessing, ~~purchasing,~~ obtaining, using, ingesting, inhaling, or transporting 1 ounce or less of  
25 usable marijuana, except that not more than 8 grams may be in a concentrated form and not more than ~~800~~  
26 100 milligrams of THC may be in edible marijuana products meant to be eaten or swallowed in solid form;

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

1 and not more than ~~800-100~~ milligrams of THC may be in edible marijuana products meant to be eaten or  
2 swallowed in solid form;

3 (c) in or on the grounds of a private residence, possessing, planting, or cultivating ~~up to two~~ one  
4 mature marijuana plants ~~plant and two seedlings~~ one seedling, or ~~four mature marijuana plants and four~~  
5 ~~seedlings for a registered cardholder~~, and possessing, harvesting, drying, processing, or manufacturing the  
6 marijuana, provided that:

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

10 (ii) not more than twice the number of marijuana plants permitted under this subsection (1)(c) may  
11 be cultivated in or on the grounds of a single private residence simultaneously;

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

15 (iv) no portion of a private residence used for cultivation of marijuana and manufacture of  
16 marijuana products for personal use may be shared with, rented, or leased to a marijuana business;

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

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

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

25 (3) A person who cultivates marijuana plants or stores marijuana outside of a locked space is  
26 subject to a civil fine not exceeding \$250 and forfeiture of the marijuana.

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

1 (5) For a person who is under 21 years of age and is not a registered cardholder, possession, use,  
2 delivery without consideration, or distribution without consideration of marijuana is punishable in accordance  
3 with 45-5-624.

4 (6) For a person who is under 18 years of age and is not a registered cardholder, possession, use,  
5 transportation, delivery without consideration, or distribution without consideration of marijuana paraphernalia is  
6 punishable by forfeiture of the marijuana paraphernalia and 8 hours of drug education or counseling.

7 (7) Unless otherwise permitted under the provisions of Title 16, chapter 12, part 5, the possession,  
8 production, delivery without consideration to a person 21 years of age or older, or possession with intent to  
9 deliver more than 1 ounce but less than 2 ounces of marijuana or more than 8 grams but less than 16 grams of  
10 marijuana in a concentrated form is punishable by forfeiture of the marijuana and:

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

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

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

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

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

21

22 **Section 8.** Section 16-12-108, MCA, is amended to read:

23 "**16-12-108. Limitations of act.** (1) This chapter does not permit:

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

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



- 1 (c) smoking or consuming marijuana while riding in the passenger seat within an enclosed  
2 compartment of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being  
3 operated;
- 4 (d) delivery or distribution of marijuana or marijuana products, with or without consideration, to a  
5 person under 21 years of age;
- 6 (e) purchase, consumption, or use of marijuana or marijuana products by a person under 21 years  
7 of age;
- 8 ~~(f)~~ (g) purchase of marijuana or marijuana products by a person without a registry identification card;
- 9 ~~(f)~~ (g) possession or transport of marijuana or marijuana products by a person under 21 years of age  
10 unless the underage person is at least 18 years of age and is an employee of a marijuana business licensed  
11 under this chapter and engaged in work activities;
- 12 ~~(g)~~ (h) possession or consumption of marijuana or marijuana products or possession of marijuana  
13 paraphernalia:
- 14 (i) on the grounds of any property owned or leased by a school district, a public or private  
15 preschool, school, or postsecondary school as defined in 20-5-402;
- 16 (ii) in a school bus or other form of public transportation;
- 17 (iii) in a health care facility as defined in 50-5-101;
- 18 (iv) on the grounds of any correctional facility; or
- 19 (v) in a hotel or motel room;
- 20 ~~(h)~~ (i) using marijuana or marijuana products in a location where smoking tobacco is prohibited;
- 21 ~~(h)~~ (i) consumption of marijuana or marijuana products in a public place, except as allowed by the  
22 department;
- 23 ~~(i)~~ (k) conduct that endangers others;
- 24 ~~(k)~~ (l) undertaking any task while under the influence of marijuana or marijuana products if doing so  
25 would constitute negligence or professional malpractice; or
- 26 ~~(i)~~ (m) performing solvent-based extractions on marijuana using solvents other than water, glycerin,  
27 propylene glycol, vegetable oil, or food-grade ethanol unless licensed for this activity by the department.
- 28 (2) A person may not cultivate marijuana in a manner that is visible from the street or other public

1 area.

2 (3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that  
3 allows use of marijuana by a registered cardholder.

4 (4) Nothing in this chapter may be construed to:

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

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

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

13 (d) prohibit an employer from including in any contract a provision prohibiting the use of marijuana  
14 for a debilitating medical condition; or

15 (e) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or  
16 discrimination pursuant to 49-1-102.

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

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

26 (7) Unless specifically exempted by this chapter, the provisions of Title 45, chapter 9, apply to the  
27 conduct of consumers, licensees, and registered cardholders."  
28

1           **Section 9.** Section 16-12-109, MCA, is amended to read:

2           **"16-12-109. Unlawful conduct by licensees -- penalties.** (1) If the department has reasonable  
3 cause to believe that a licensee has violated a provision of this chapter or a rule of the department, it may, in its  
4 discretion and in addition to any other penalties prescribed:

- 5           (a)     reprimand a licensee;
- 6           (b)     revoke the license of the licensee;
- 7           (c)     suspend the license for a period of not more than 3 months;
- 8           (d)     refuse to grant a renewal of the license after its expiration; or
- 9           (e)     impose a civil penalty not to exceed \$3,000.

10          (2)     The department shall consider mitigating circumstances and may adjust penalties within  
11 penalty ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances  
12 are:

- 13          (a)     compliance with the provisions of this chapter within the prior 3 years;
- 14          (b)     the licensee has made good faith efforts to prevent a violation; or
- 15          (c)     the licensee has cooperated in the investigation of the violation and the licensee or an  
16 employee or agent of the licensee accepts responsibility.

17          (3)     The department shall consider aggravating circumstances and may adjust penalties within  
18 penalty ranges based on its consideration of aggravating circumstances. Examples of aggravating  
19 circumstances are:

- 20          (a)     prior warnings about compliance problems;
- 21          (b)     prior violations of the provisions of this chapter within the past 3 years;
- 22          (c)     lack of written policies governing employee conduct;
- 23          (d)     additional violations revealed during the course of the investigation;
- 24          (e)     efforts to conceal a violation;
- 25          (f)     intentional violations; or
- 26          (g)     involvement of more than one patron or employee in a violation.

27          (4)     For each licensing program regulated by the department under this chapter, the department is  
28 designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential

1 criminal justice information regarding licensees and license applicants and regarding possible unlicensed  
2 practice.

3 (5) The department shall revoke and may not reissue a license or endorsement belonging to a  
4 person:

5 (a) whose controlling beneficial owner is an individual convicted of a felony drug offense;

6 (b) who allows another person not authorized or lawfully allowed to be in possession of the  
7 license;

8 (c) who transports marijuana or marijuana products outside of Montana, unless otherwise allowed  
9 by federal law;

10 (d) who operates a carbon dioxide or hydrocarbon extraction system without obtaining a  
11 manufacturing license;

12 (e) who purchases marijuana from an unauthorized source in violation of this chapter; ~~or~~

13 (f) who sells, distributes, or transfers marijuana or marijuana products to a person who is not a  
14 registered cardholder; or

15 ~~(f)~~(g) who sells, distributes, or transfers marijuana or marijuana products to a person the licensee  
16 knows or should know is under 21 years of age.

17 (6) A licensee whose license is revoked may not reapply for licensure for 3 years from the date of  
18 the revocation.

19 (7) (a) Review of a department action imposing a fine, suspension, or revocation under this  
20 chapter must be conducted as a contested case hearing before the department's office of dispute resolution  
21 under the provisions of the Montana Administrative Procedure Act.

22 (b) A person may appeal any decision of the department concerning the issuance, rejection,  
23 suspension, or revocation of a license provided for by this chapter to the district court in the county in which the  
24 person operates or proposes to operate. If a person operates or seeks to operate in more than one county, the  
25 person may seek judicial review in the district court with jurisdiction over actions arising in any of the counties  
26 where it operates or seeks to operate.

27 (c) An appeal pursuant to subsection (7)(b) must be made by filing a complaint setting forth the  
28 grounds for relief and the nature of relief demanded with the district court within 30 days following receipt of

1 notice of the department's final decision."

2

3 **NEW SECTION. Section 10. Drug awareness and education account.** (1) There is a drug  
4 awareness and education account in the state special revenue fund to be administered by the department of  
5 justice. The account consists of revenue deposited pursuant to 16-12-111.

6 (2) The account must be used to provide awareness and education programs in schools for youth  
7 drug prevention.

8

9 **Section 11.** Section 16-12-111, MCA, is amended to read:

10 **"16-12-111. Marijuana state special revenue account -- operating reserve -- transfer of excess**  
11 **funds.** (1) There is a dedicated marijuana state special revenue account within the state special revenue fund  
12 established in 17-2-102, to be administered by the department.

13 (2) The account consists of:

14 (a) money deposited into the account pursuant to this chapter;

15 (b) the taxes collected pursuant to Title 15, chapter 64, part 1;

16 (c) license and registered cardholder fees deposited into the account pursuant to this chapter;

17 (d) taxes deposited into the account pursuant to 16-12-310; and

18 (e) civil penalties collected under this chapter.

19 (3) Except as provided in subsection (4), money in the account must be used by the department  
20 for the purpose of administering the provisions of this chapter.

21 (4) At the end of each fiscal year, the department shall transfer funds in excess of a 3-month  
22 operating reserve necessary to fund operating costs at the beginning of the next fiscal year ~~in the following~~  
23 ~~order as follows:~~

24 (a) ~~an amount not to exceed \$6 million must be transferred to~~ 50% to the credit of the healing and  
25 ending addiction through recovery and treatment (HEART) account established in 16-12-122;

26 ~~(b) the net balance remaining after distribution to the HEART account must be distributed as follows:~~

27 ~~(b)~~ (b) 20% to the credit of the department of fish, wildlife, and parks to be used solely as funding for  
28 wildlife habitat in the same manner as funding generated under 87-1-242(3) and used pursuant to 87-1-209;

- 1           (c) 5% to the credit of the drug awareness and education account established in [section 10].
- 2           ~~(ii)(d)~~ 4% to the state park account established in 23-1-105(1);
- 3           ~~(iii)(e)~~ 4% to the trails and recreational facilities account established in 23-2-108;
- 4           ~~(iv)(f)~~ 4% to the nongame wildlife account established in 87-5-121;
- 5           ~~(v)(g)~~ 3% or \$200,000, whichever is less, to the veterans and surviving spouses state special
- 6 revenue account provided for in 10-2-108;
- 7           ~~(vi) for the biennium beginning July 1, 2021, \$300,000 to the department of justice to administer grant~~
- 8 ~~funding to local and state law enforcement agencies for the purpose of purchasing and training drug detection~~
- 9 ~~canines and canine handlers, including canines owned by local law enforcement agencies to replace canines~~
- 10 ~~who were trained to detect marijuana;~~
- 11           ~~(vii)(h)~~ \$150,000 to the board of crime control to fund crisis intervention team training as provided in
- 12 44-7-110; and
- 13           ~~(viii)(i)~~ the remainder to the general fund. ~~(Subsection (4)(b)(vi) terminates June 30, 2025--sec.~~
- 14 ~~117(2), Ch. 576, L. 2021.)"~~

15

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

17           **"16-12-201. Licensing of cultivators, manufacturers, and dispensaries.** (1) (a) Between January

18 1, 2022, and June 30, ~~2023~~ 2033, the department may only accept applications from and issue licenses to

19 former medical marijuana licensees that were licensed by or had an application pending with the department of

20 public health and human services on November 3, 2020, and are in good standing with the department and in

21 compliance with this chapter, rules adopted by the department, and any applicable local regulations or

22 ordinances as of January 1, 2022.

23           (b) The department shall begin accepting applications for and issuing licenses to cultivate,

24 manufacture, or sell marijuana or marijuana products to applicants who are not former medical marijuana

25 licensees under subsection (1)(a) on or after July 1, 2023.

26           (2) (a) The department shall adopt rules to govern the operation of former medical marijuana

27 licensees and facilitate the process of transitioning former medical marijuana licensees to the appropriate

28 license under this chapter with a minimum of disruption to business operations.

1 (b) Beginning January 1, 2022, a former medical marijuana licensee may sell marijuana and  
 2 marijuana products to registered cardholders at the medical tax rate set forth in 15-64-102 ~~and to consumers at~~  
 3 ~~the adult-use marijuana tax rate set forth in 15-64-102~~ under the licensee's existing license in a jurisdiction that  
 4 allows for the operation of marijuana businesses pursuant to 16-12-301 until the former medical marijuana  
 5 licensee's next license renewal date, by which time the former medical licensee must have applied for and  
 6 obtained the appropriate licensure under this chapter to continue operations, unless an extension of time is  
 7 granted by the department.

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

11 ~~(ii) A former medical marijuana licensee who sells marijuana and marijuana products exclusively to~~  
 12 ~~registered cardholders is not required to obtain an adult-use dispensary license.~~

13 (3) The department may amend or issue licenses to provide for staggered expiration dates. The  
 14 department may provide for initial license terms of greater than 12 months but no more than 23 months in  
 15 adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term  
 16 implementing staggered license terms may be prorated by the department."  
 17

18 **Section 13.** Section 16-12-202, MCA, is amended to read:

19 **"16-12-202. Testing laboratories -- licensing -- inspection -- state laboratory responsibility. (1)**

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

22 (b) A person who is a controlling beneficial owner of a testing laboratory or holds a financial  
 23 interest in a licensed testing laboratory may not be a controlling beneficial owner or have a financial interest in  
 24 any entity involved in the cultivation, manufacture, or sale of marijuana or marijuana products for whom testing  
 25 services are performed.

26 (2) (a) The state laboratory shall endorse a testing laboratory to perform the testing required under  
 27 16-12-206 and 16-12-209 before a testing laboratory may apply for licensure or renewal with the department.

28 (b) (i) The state laboratory shall inspect a testing laboratory before endorsing a testing laboratory

1 for licensure or renewal and may not endorse a testing laboratory for licensure or renewal if the applicant does  
2 not meet the requirements of 16-12-206 and this section.

3 (ii) The state laboratory may not issue a temporary license while an inspection is pending.

4 (3) An inspection conducted for licensure or renewal of a license must include a review of an  
5 applicant's or testing laboratory's:

6 (a) physical premises where testing will be conducted;

7 (b) instrumentation;

8 (c) protocols for sampling, handling, testing, reporting, security and storage, and waste disposal;

9 (d) raw data on tests conducted by the laboratory, if the inspection is for renewal of a license; and

10 (e) vehicles used for transporting marijuana or marijuana product samples for testing purposes.

11 (4) Upon receiving an endorsement from the state laboratory for licensure or annual renewal, a  
12 testing laboratory must apply for licensure or renewal with the department by submitting to the department:

13 (a) the information required by 16-12-203; and

14 (b) a fee that the department shall establish by rule.

15 (5) The state laboratory shall:

16 (a) measure the tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic  
17 acid content of marijuana and marijuana products;

18 (b) test marijuana and marijuana products for pesticides, solvents, moisture levels, mold, mildew,  
19 and other contaminants; and

20 (c) establish and enforce standard operating procedures and testing standards for testing  
21 laboratories to ensure that ~~consumers and~~ registered cardholders receive consistent and uniform information  
22 about the potency and quality of the marijuana and marijuana products they receive. The state laboratory shall:

23 (i) consult with independent national or international organizations that establish testing standards  
24 for marijuana and marijuana products;

25 (ii) require testing laboratories to follow uniform standards and protocols for the samples accepted  
26 for testing and the processes used for testing the samples; and

27 (iii) track and analyze the raw data for the results of testing conducted by testing laboratories to  
28 ensure that the testing laboratories are providing consistent and uniform results.



1 (6) The department may retain the services of the analytical laboratory provided by the department  
2 of agriculture pursuant to 80-1-104 for the testing contemplated in this section.

3 (7) If an analysis of raw testing data indicates that licensees are providing test results that vary  
4 among testing laboratories by an amount determined by the state laboratory by rule, the department shall  
5 investigate the inconsistent results and determine within 60 days the steps the testing laboratories must take to  
6 ensure that each testing laboratory provides accurate and consistent results.

7 (8) If the analysis of raw testing data indicates a testing laboratory may be providing inconsistent  
8 results, the state laboratory may suspend the testing laboratory's license. A suspension must be based on rules  
9 adopted by the state laboratory.

10 (9) The department shall revoke a testing laboratory's license upon a determination that the  
11 laboratory is:

12 (a) providing test results that are fraudulent or misleading; or

13 (b) providing test results without having:

14 (i) the equipment needed to test marijuana, marijuana concentrates, or marijuana products; or

15 (ii) the equipment required under this chapter to conduct the tests for which the laboratory is  
16 providing results.

17 (10) A revocation under this section is subject to judicial review."  
18

19 **Section 14.** Section 16-12-203, MCA, is amended to read:

20 **"16-12-203. Licensing types -- requirements -- limitations -- activities.** (1) (a) Subject to  
21 subsection (3) and this subsection (1), the department shall issue a license to or renew a license for a person  
22 who is applying to be a cultivator, manufacturer, medical marijuana dispensary, ~~adult-use dispensary,~~ or testing  
23 laboratory if the person submits to the department:

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

25 (ii) proof that the natural person having day-to-day operational control over the business is a  
26 Montana resident;

27 (iii) a statement, on a form prescribed by the department, that the person:

28 (A) will not divert to any other person the marijuana that the person cultivates or the marijuana

1 products that the person manufactures for consumers or registered cardholders, unless the marijuana or  
2 marijuana products are sold to another licensee as part of a sale of a business as allowed under this section;  
3 and

4 (B) has no pending citations for violations occurring under this chapter or the marijuana laws of any  
5 other state or jurisdiction;

6 (iv) the street address of the location at which marijuana, marijuana concentrates, or marijuana  
7 products will be cultivated, manufactured, sold, or tested; and

8 (v) proof that the applicant has source of funding from a suitable source. A lender or other source  
9 of money or credit may be found unsuitable if the source:

10 (A) is a person whose prior financial or other activities or criminal record:

11 (B) poses a threat to the public interest of the state;

12 (C) poses a threat to the effective regulation and control of marijuana and marijuana products; or

13 (D) creates a danger of illegal practices, methods, or activities in the conduct of the licensed  
14 business.

15 (b) If the person to be licensed consists of more than one individual, the names of all owners must  
16 be submitted along with the fingerprints and date of birth of each owner having at least a 5% controlling  
17 beneficial ownership interest.

18 (c) Nonindividuals who apply for the issuance of a marijuana business license shall disclose to the  
19 department the following:

20 (i) a complete and accurate organizational chart of the marijuana business disclosing the identity  
21 and ownership percentages of its controlling beneficial owners;

22 (ii) whether the applicant has ever filed for bankruptcy;

23 (iii) whether the applicant has ever been a party to a lawsuit, either as a plaintiff or defendant;

24 (iv) any financial interests held by the applicant in another marijuana business in any state;

25 (v) if the controlling beneficial owner is a publicly traded corporation, the controlling beneficial  
26 owners' managers and any beneficial owners that directly or indirectly beneficially own 5% or more of the  
27 owner's interest in the controlling beneficial owner;

28 (vi) if the controlling beneficial owner is not a publicly traded corporation, the controlling beneficial

1 owner's managers and any beneficial owners that directly or indirectly beneficially own 5% or more of the  
2 owner's interest in the controlling beneficial owner;

3 (vii) if the controlling beneficial owner is a natural person, the natural person's identifying  
4 information;

5 (viii) a person that is both a passive beneficial owner and a financial interest holder in the marijuana  
6 business; and

7 (ix) any financial interest holder that holds two or more financial interests in the marijuana business  
8 or that is contributing over 50% of the operating capital of the marijuana business.

9 (d) The department may request that the marijuana business disclose each beneficial owner and  
10 affiliate of an applicant or marijuana business or each controlling beneficial owner that is not a publicly traded  
11 corporation.

12 (e) An applicant or marijuana business that is not a publicly traded corporation shall affirm under  
13 penalty of perjury that it exercised reasonable care to confirm that its passive beneficial owners, financial  
14 interest holders, and qualified institutional investors are not persons prohibited pursuant to this section or  
15 otherwise restricted from holding an interest under this chapter. An applicant's or marijuana business's failure to  
16 exercise reasonable care is a basis for denial, fine, suspension, revocation, or other sanction by the  
17 department.

18 (f) An applicant or marijuana business that is a publicly traded corporation shall affirm under  
19 penalty of perjury that it exercised reasonable care to confirm that its passive beneficial owners, financial  
20 interest holders, and qualified institutional investors are not persons prohibited pursuant to this section, or  
21 otherwise restricted from holding an interest under this chapter. An applicant's or marijuana business's failure to  
22 exercise reasonable care is a basis for denial, fine, suspension, revocation, or other sanction by the  
23 department.

24 (g) This section does not restrict the department's ability to reasonably request information or  
25 records at renewal or as part of any other investigation following initial licensure of a marijuana business.

26 (2) The department may not license a person under this chapter if the person or an owner,  
27 including a person with a financial interest:

28 (a) has a felony conviction or a conviction for a drug offense, including but not limited to, a

- 1 conviction for a violation of any marijuana law in any other state within the past 5 years and, after an  
2 investigation, the department finds that the applicant has not been sufficiently rehabilitated as to warrant the  
3 public trust;
- 4 (b) is in the custody of or under the supervision of the department of corrections or a youth court;
- 5 (c) has been convicted of a violation under 16-12-524 or of making a fraudulent representation  
6 under the former medical marijuana program administered by the department of public health and human  
7 services;
- 8 (d) is under 21 years of age;
- 9 (e) has failed to:
- 10 (i) pay any taxes, interest, penalties, or judgments due to a government agency;
- 11 (ii) comply with any provisions of Title 15 or Title 16, including the failure to file any tax return or  
12 report;
- 13 (iii) stay out of default on a government-issued student loan;
- 14 (iv) pay child support; or
- 15 (v) remedy an outstanding delinquency for child support or for taxes or judgments owed to a  
16 government agency;
- 17 (f) has had a license issued under this chapter or a former medical marijuana license revoked  
18 within 3 years of the date of the application; or
- 19 (g) has resided in Montana for less than 1 year.
- 20 (3) Marijuana for use pursuant to this chapter must be cultivated and manufactured in Montana  
21 unless federal law otherwise allows for the interstate distribution of marijuana.
- 22 (4) Except as provided in 16-12-209, a cultivator, manufacturer, or medical marijuana dispensary,  
23 ~~or adult-use dispensary~~ shall:
- 24 (a) prior to selling marijuana or marijuana products, submit samples to a testing laboratory  
25 pursuant to this chapter and administrative rules;
- 26 (b) allow the department to collect samples of marijuana or marijuana products during inspections  
27 of licensed premises for testing as provided by the department by rule; and
- 28 (c) participate as required by the department by rule in a seed-to-sale tracking system established

1 by the department pursuant to 16-12-105.

2 (5) (a) A person licensed under this section may cultivate marijuana and manufacture marijuana  
3 products for use by ~~consumers~~ or registered cardholders only at one of the following locations:

4 (i) a property that is owned by the licensee; or

5 (ii) with written permission of the property owner filed with the department when applying for or  
6 renewing a license, a property that is rented or leased by the licensee.

7 (b) No portion of the property used for cultivation of marijuana or manufacture of marijuana  
8 products or marijuana concentrate may be shared with or rented or leased to another licensee.

9 (c) Marijuana or marijuana products may not be consumed on the premises of any licensed  
10 premises.

11 (6) A cultivator licensed under this chapter in accordance with licensing requirements set forth in  
12 this chapter and rules adopted by the department:

13 (a) may operate ~~adult-use~~ medical marijuana dispensaries;

14 (b) may engage in manufacturing; and

15 (c) may not engage in outdoor cultivation of marijuana, except as provided in 16-12-223(6).

16 (7) A cultivator or manufacturer:

17 (a) may contract or otherwise arrange for another party that is licensed to process a cultivator's or  
18 manufacturer's marijuana into marijuana products and return the marijuana products to the cultivator or  
19 manufacturer for sale; and

20 (b) except as allowed pursuant to 16-12-207, may not open a dispensary before obtaining the  
21 required license and before the department has completed the inspection required under this chapter unless  
22 permitted to do so pursuant to 16-12-207."

23

24 **Section 15.** Section 16-12-207, MCA, is amended to read:

25 "**16-12-207. Licensing as privilege -- criteria.** (1) A cultivator license, manufacturer license, ~~adult-~~  
26 ~~use dispensary license,~~ medical marijuana dispensary license, combined-use marijuana license, marijuana  
27 transporter license, or any other license authorized under this chapter is a privilege that the state may grant to  
28 an applicant and is not a right to which an applicant is entitled. In making a licensing decision, the department

1 shall consider:

2 (a) the qualifications of the applicant; and

3 (b) the suitability of the proposed licensed premises, including but not limited to cultivation centers,  
4 dispensaries, and manufacturing facilities.

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

7 (3) (a) The department shall deny a cultivator license, manufacturer license, ~~adult-use dispensary~~  
8 ~~license~~, or medical marijuana license if the applicant's proposed licensed premises:

9 (i) is situated within a zone of a locality where an activity related to the use of marijuana conflicts  
10 with an ordinance, a certified copy of which has been filed with the department;

11 (ii) is not approved by local building, health, or fire officials as provided for in this chapter; or

12 (iii) is within 500 feet of and on the same street as a building used exclusively as a church,  
13 synagogue, or other place of worship or as a school or postsecondary school other than a commercially  
14 operated school, unless the locality requires a greater distance. This distance must be measured in a straight  
15 line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the  
16 licensee's premises. This subsection (3)(a)(iii) does not apply if the application is for license renewal and the  
17 licensed premises was established before the church, synagogue, or other place of worship or school or  
18 postsecondary school existed on the same street.

19 (b) For the purposes of this subsection (3), "school" and "postsecondary school" have the  
20 meanings provided in 20-5-402.

21 (4) A licensee may not sell or otherwise transfer marijuana or marijuana products through a drive-  
22 up window, except that a dispensary may hand-deliver marijuana or marijuana products to a registered  
23 cardholder in a vehicle that is parked immediately outside the subject dispensary.

24 (5) A marijuana business may not dispense or otherwise sell marijuana or marijuana products from  
25 a vending machine or allow such a vending machine to be installed at the interior or exterior of the premises.

26 (6) A marijuana business may not utilize the United States postal service or an alternative carrier  
27 other than a licensed marijuana transporter to transport, distribute, ship, or otherwise deliver marijuana or  
28 marijuana products.

1 (7) A marijuana business may not provide free marijuana or marijuana products or offer samples of  
2 marijuana or marijuana products.

3 (8) Marijuana or a marijuana product may not be given as a prize, premium, or consideration for a  
4 lottery, contest, game of chance, game of skill, or competition of any kind.

5 (9) (a) Except as provided in subsection (9)(c), ~~an adult-use dispensary or a~~ medical marijuana  
6 dispensary must have a single, secured entrance for patrons and shall implement strict security measures to  
7 deter and prevent the theft of marijuana and unauthorized entrance in accordance with department rule.

8 (b) Except as provided in subsection (9)(c), a marijuana business that is not ~~an adult-use~~  
9 ~~dispensary or a~~ medical marijuana dispensary must implement security measures in accordance with  
10 department rule to deter and prevent the theft of marijuana and unauthorized entrance.

11 (c) The provisions of this subsection (9) do not supersede any state or local requirements relating  
12 to minimum numbers of points of entry or exit or any state or local requirements relating to fire safety.

13 (10) Each marijuana business shall install a video monitoring system that must, at a minimum:

14 (a) allow for the transmission and storage, by digital means, of a video feed that displays the  
15 interior and exterior of the cannabis establishment; and

16 (b) be capable of being recorded as prescribed by the department.

17 (11) ~~An adult-use dispensary or a~~ medical marijuana dispensary may not operate between the  
18 hours of 8 p.m. and 9 a.m. daily.

19 (12) A person under 21 years of age is not permitted inside a marijuana business unless the person  
20 is a registered cardholder."

21

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

23 **"16-12-208. Restrictions.** (1) A cultivator or manufacturer may not cultivate marijuana or manufacture  
24 marijuana products in a manner that is visible from the street or other public area without the use of binoculars,  
25 aircraft, or other optical aids.

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

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

3 (4) A licensee may not allow a person under ~~18~~21 years of age to volunteer or work for the  
4 licensee.

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

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

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

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

14 (B) the name of the product; and

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

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

20 (7) ~~An adult-use dispensary or~~ A medical marijuana dispensary may not sell or otherwise transfer  
21 hemp or alcohol from a licensed premises.

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

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

28 (c) If a license applicant submits packages and labels for preapproval, final determination for



1 packages and labels may not be made until the applicant has been issued a license.

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

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

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

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

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

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

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

11 (9) For the purpose of this section, "exit packaging" means a sealed, child-resistant certified  
12 receptacle into which marijuana or marijuana products already within a container are placed at the retail point of  
13 sale."  
14

15 **Section 17.** Section 16-12-209, MCA, is amended to read:

16 **"16-12-209. Testing of marijuana and marijuana products.** (1) A cultivator, manufacturer, ~~adult-use~~  
17 ~~dispensary~~, or medical marijuana dispensary may not sell marijuana or marijuana products until the marijuana  
18 or marijuana products have been tested by a testing laboratory and meet the requirements of this section. The  
19 licensee shall pay for the testing.

20 (2) A licensee shall submit material that has been collected in accordance with a sampling protocol  
21 established by the state laboratory by rule. The protocol must address the division of marijuana and marijuana  
22 products into batch sizes for testing.

23 (3) The state laboratory shall adopt rules regarding the types of tests that must be performed to  
24 ensure product safety and consumer protection. Rules must include but are not limited to testing for:

25 (a) the potency of the cannabinoids present; and

26 (b) the presence of contaminants.

27 (4) The testing laboratory shall conduct a visual inspection of each batch to determine the  
28 presence of levels of foreign matter, debris, insects, and visible mold.

1 (5) The state laboratory shall establish by rule the acceptable levels of moisture, pesticides,  
2 residual solvents, mold, mildew, foreign matter, debris, insects, and other contaminants that marijuana products  
3 may contain.

4 (6) The testing laboratory shall:

5 (a) issue a certificate of analysis certifying the test results; and

6 (b) report the results to the seed-to-sale tracking system established pursuant to 16-12-105.

7 (7) A licensee may request that material that has failed to pass the required tests be retested in  
8 accordance with the rules adopted by the state laboratory providing for retesting parameters and requirements.

9 (8) Marijuana or a marijuana product must include a label indicating that the marijuana or  
10 marijuana product has been tested.

11 (9) (a) The department shall collect and, except as provided in subsection (9)(b), destroy samples  
12 of marijuana and marijuana products that fail to meet the acceptable levels to ensure product safety and  
13 consumer protection.

14 (b) If a sample fails due to THC levels in excess of the allowable limit and is not deficient in any  
15 other respect, the department may dispose of the sample by means other than destruction in accordance with  
16 rule.

17 (c) The department may contract for the duties under this subsection (9)."  
18

19 **Section 18.** Section 16-12-222, MCA, is amended to read:

20 **"16-12-222. Licensing of marijuana transporters.** (1) (a) A marijuana transporter license may be  
21 issued to a person to provide logistics, distribution, delivery, and storage of marijuana and marijuana products.  
22 A marijuana transporter license is valid for 2 years. A licensed marijuana transporter is responsible for the  
23 marijuana and marijuana products once it takes control of the marijuana or marijuana product.

24 (b) A marijuana transporter may contract with multiple licensed marijuana businesses.

25 (c) On or after March 1, 2022, and except as otherwise provided in this section, all persons who  
26 transport marijuana or marijuana products shall hold a valid marijuana transporter license. The department shall  
27 begin accepting applications on or after January 1, 2022. The department may allow for a reasonable grace  
28 period for complying with this requirement.

1 (d) The department shall establish by rule the requirements for licensure and the applicable fee for  
2 a marijuana transporter license or the renewal of a transporter license. The department may not license a  
3 person to be a marijuana transporter if the applicant meets any of the criteria established for denial of a license  
4 under 16-12-203(2).

5 (2) A person who is not licensed under this chapter must apply for and obtain a marijuana  
6 transporter license in order to transport marijuana or marijuana products.

7 (3) A registered cardholder ~~or consumer~~ is not required to possess a marijuana transporter license  
8 when purchasing marijuana or marijuana products at a dispensary.

9 (4) A person who obtains a cultivator license, manufacturer license, ~~adult-use dispensary license,~~  
10 medical marijuana dispensary license, or testing laboratory license or is an employee of one of those licensees,  
11 may:

12 (a) transport marijuana or marijuana products between other licensed premises without a  
13 transporter license so long as the transportation:

14 (i) complies with rules implementing the seed-to-sale tracking system set forth in 16-12-105; and

15 (ii) includes a printed manifest containing information as required by the department; and

16 (b) deliver marijuana from a dispensary to a registered cardholder provided that the person  
17 delivering the marijuana or marijuana products:

18 (i) complies with rules adopted by the department; and

19 (ii) includes a printed delivery manifest from a dispensary to a registered cardholder containing the  
20 registered cardholder's address and cardholder number and the dispensary's address and license number.

21 (5) (a) A marijuana transporter licensee may maintain a licensed premises to temporarily store  
22 marijuana and marijuana products and to use as a centralized distribution point in a jurisdiction where the local  
23 government approval provisions contained in 16-12-301 have been satisfied or in a county in which the majority  
24 of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

25 (b) The licensed premises must be located in a jurisdiction that permits the operation of a  
26 marijuana business and comply with rules adopted by the department.

27 (c) A marijuana transporter may store and distribute marijuana and marijuana products from this  
28 location. A storage facility must meet the same security requirements that are required to obtain a license under

1 this chapter.

2 (6) A marijuana transporter shall use the seed-to-sale tracking system developed pursuant to 16-  
3 12-105 to create shipping manifests documenting the transport of retail marijuana and retail marijuana products  
4 throughout the state.

5 (7) A marijuana transporter may deliver marijuana or marijuana products only to licensed premises  
6 or registered cardholders ~~only and may not make deliveries of marijuana or marijuana products to individual~~  
7 ~~consumers.~~

8 (8) A person delivering marijuana or marijuana products for a marijuana transporter must possess  
9 a valid marijuana worker permit provided for under 16-12-226 and be a current employee of the marijuana  
10 transporter licensee."  
11

12 **Section 19.** Section 16-12-224, MCA, is amended to read:

13 **"16-12-224. Licensing of dispensaries.** (1) Except as provided in 16-12-201(2), an applicant for a  
14 dispensary license shall demonstrate that the local government approval provisions in 16-12-301 have been  
15 satisfied in the jurisdiction where each proposed dispensary is located if the proposed dispensary would be  
16 located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the  
17 November 3, 2020, general election.

18 (2) When evaluating an initial or renewal application, the department shall evaluate each proposed  
19 dispensary for compliance with the provisions of 16-12-207 and 16-12-210.

20 ~~(3) An adult-use dispensary licensee may operate at a shared location with a medical marijuana~~  
21 ~~dispensary if the adult-use dispensary and medical marijuana dispensary are owned by the same person.~~

22 ~~(4)(3)~~ A medical marijuana dispensary is authorized to sell exclusively to registered cardholders  
23 marijuana, and marijuana products, ~~and live marijuana plants.~~

24 ~~(5) An adult-use dispensary is authorized to sell marijuana, marijuana products, and live marijuana~~  
25 ~~plants to consumers or registered cardholders.~~

26 ~~(6)(4)~~ The department shall charge a dispensary license fee for an initial application and at each  
27 renewal. The dispensary license fee is \$5,000 for each location that a licensee operates as ~~an adult-use~~  
28 ~~dispensary or a medical marijuana dispensary.~~

1           ~~(7)~~(5) The department may adopt rules:

2           (a) for inspection of proposed dispensaries;

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

4           (c) establishing or limiting the THC content of the marijuana or marijuana products that may be  
5 sold at ~~an adult-use dispensary or medical marijuana~~ a dispensary.

6           ~~(8)~~(6) (a) Marijuana and marijuana products sold at a dispensary are regulated and sold on the basis  
7 of the concentration of THC in the products and not by weight.

8           (b) ~~Except as provided in subsection (8)(c), for~~ For the purposes of this chapter, a single package  
9 is limited to:

10           (i) for marijuana sold as flower, 1 ounce of usable marijuana. The total potential ~~psychoactive~~  
11 intoxicating THC of marijuana flower may not exceed ~~35%~~ 10% ;

12           (ii) for marijuana sold as a concentrate, the total potential intoxicating THC may not exceed 10%;

13           ~~(ii)~~(iii) for a marijuana product sold as a capsule, no more than ~~400~~10 milligrams of THC per capsule  
14 and no more than ~~800~~100 milligrams of THC per package.

15           ~~(iii)~~(iv) for a marijuana product sold as a tincture, no more than ~~800~~100 milligrams of THC;

16           ~~(iv)~~(v) for a marijuana product sold as an edible or a food product, no more than 100 milligrams of  
17 THC. A single serving of an edible marijuana product may not exceed ~~40~~5 milligrams of THC.

18           ~~(v)~~(vi) for a marijuana product sold as a topical product, a concentration of no more than 6% THC and  
19 no more than ~~800~~100 milligrams of THC per package;

20           ~~(v)~~(vii) for a marijuana product sold as a suppository or transdermal patch, no more than ~~400~~10  
21 milligrams of THC per suppository or transdermal patch and no more than ~~800~~100 milligrams of THC per  
22 package; and

23           ~~(vii)~~(viii) for any other marijuana product, no more than ~~800~~100 milligrams of THC.

24           ~~(c) A dispensary may sell marijuana or marijuana products having higher THC potency levels than~~  
25 ~~described in subsection (8) to registered cardholders.~~

26           ~~(9)~~(7) A licensee or employee is prohibited from conducting a transaction that would result in a  
27 ~~consumer or registered cardholder exceeding the personal possession amounts set forth in 16-12-106 and 16-~~  
28 ~~12-515."~~

1

2           **Section 20.** Section 16-12-226, MCA, is amended to read:

3           **"16-12-226. Marijuana worker permit -- requirements.** (1) A marijuana worker permit is required for  
4 an employee who performs work for or on behalf of a marijuana business if the individual participates in any  
5 aspect of the marijuana business.

6           (2)   (a) Except as provided in subsection (2)(b), a marijuana business may not allow an employee  
7 to perform any work at the licensed premises until it has verified that the employee has obtained a valid  
8 marijuana worker permit issued in accordance with this chapter.

9           (b)   An employee of a former medical marijuana licensee in good standing with the department as  
10 of January 1, 2022, shall obtain a marijuana worker permit within 90 days of January 1, 2022.

11          (3)   An applicant for a marijuana worker permit shall submit:

12          (a)   an application on a form prescribed by the department with information including the  
13 applicant's:

14           (i)   name;

15           (ii)  mailing address;

16           (iii) date of birth;

17           (iv)  signature; and

18           (v)   response to conviction history questions requested by the department;

19           (b)   a copy of a driver's license or identification card issued by one of the fifty states in the United  
20 States or a passport;

21           (c)   annual proof of having passed training that includes identification, prevention, and reporting for  
22 human trafficking, rules and regulations for legal sales of marijuana in Montana, and any other training required  
23 by the department; and

24           (d)   a fee established by the department.

25          (4)   (a) Except as provided in subsection (4)(b), an application that does not contain the elements  
26 set forth in subsection (3) is incomplete.

27           (b)   The department may review an application prior to receiving the fee but may not issue a permit  
28 until the fee is received.

- 1 (5) The department shall deny an initial or renewal application if the applicant:
- 2 (a) is not ~~18~~21 years of age or older;
- 3 (b) has had a marijuana license or worker permit revoked for a violation of this chapter or any rule
- 4 adopted under this chapter within 2 years of the date of the application;
- 5 (c) has violated any provision of this chapter; or
- 6 (d) makes a false statement to the department.
- 7 (6) An employee of a licensee shall carry the employee's worker permit at all times when
- 8 performing work on behalf of a marijuana business.

9 (7) A person who holds a marijuana worker permit must notify the department in writing within 10

10 days of:

- 11 (a) a conviction for a felony;
- 12 (b) the issuance of any citation for violating a marijuana law imposed under this chapter or the
- 13 marijuana laws of any other state; or
- 14 (c) the issuance of any citation for selling or dispensing alcohol or tobacco products to a minor."
- 15

16 **Section 21.** Section 16-12-301, MCA, is amended to read:

17 **"16-12-301. Local government authority to regulate -- opt-in requirement in certain counties --**

18 **exemption for existing licensees.** (1) (a) Except as provided in subsection (1)(b), a marijuana business may

19 not operate in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in

20 the November 3, 2020, general election until:

21 (i) the category or categories of license that the marijuana business seeks has or have been

22 approved by the local jurisdiction where the marijuana business intends to operate as provided in subsection

23 (3) or (4); and

24 (ii) the business is licensed by the department pursuant to this chapter.

25 (b) A former medical marijuana licensee that does not apply for licensure ~~as an adult-use~~

26 ~~dispensary~~ may operate in its existing premises in compliance with rules adopted by the department pursuant

27 to 16-12-201(2) notwithstanding a local jurisdiction's failure to take action pursuant to subsections (3) through

28 (6).

1 (c) A former medical marijuana licensee that intends to apply for licensure as a cultivator,  
 2 manufacturer, ~~adult-use dispensary~~, or testing laboratory may operate in compliance with rules adopted by the  
 3 department pursuant to 16-12-201(2) notwithstanding a local jurisdiction's failure to take action pursuant to  
 4 subsections (3) through (6), provided that the former marijuana licensee has remained in good standing with  
 5 the department of public health and human services and the department.

6 (d) For the purpose of this section, the marijuana business categories that must be approved by a  
 7 local jurisdiction under subsections (3) through (6) in a county in which the majority of voters voted against  
 8 approval of Initiative Measure No. 190 in the November 3, 2020, general election before a business may  
 9 operate are:

- 10 (i) cultivator;
- 11 (ii) manufacturer;
- 12 (iii) medical marijuana dispensary, except as provided in subsection (1)(b);
- 13 ~~(iv) adult-use dispensary;~~
- 14 ~~(iv)~~ combined-use marijuana licensee;
- 15 ~~(v)~~ testing laboratory; and
- 16 ~~(vi)~~ marijuana transporter facility.

17 (e) Marijuana businesses located in counties in which the majority of voters voted to approve  
 18 Initiative Measure No. 190 in the November 3, 2020, general election are not subject to the local government  
 19 approval process under subsections (3) through (6).

20 (2) (a) To protect the public health, safety, or welfare, a local government may by ordinance or  
 21 otherwise regulate a marijuana business that operates within the local government's jurisdictional area. The  
 22 regulations may include but are not limited to inspections of licensed premises, including but not limited to  
 23 indoor cultivation facilities, dispensaries, manufacturing facilities, and testing laboratories in order to ensure  
 24 compliance with any public health, safety, and welfare requirements established by the department or the local  
 25 government.

26 (b) A former medical marijuana licensee that does not apply for licensure ~~as an adult-use~~  
 27 ~~dispensary~~ is exempt from complying with any local governmental regulations that are adopted under this  
 28 subsection after July 1, 2021, until its first license renewal date occurring after January 1, 2022, or the



1 expiration of any grace period granted by the locality, whichever is later.

2 (3) An election regarding whether to approve any or all of the marijuana business categories listed  
3 in subsection (1)(d) to be located within a local jurisdiction may be requested by filing a petition in accordance  
4 with 7-5-131 through 7-5-135 and 7-5-137 by:

5 (a) the qualified electors of a county; or

6 (b) the qualified electors of a municipality.

7 (4) (a) An election held pursuant to this section must be called, conducted, counted, and  
8 canvassed in accordance with Title 13, chapter 1, part 4.

9 (b) An election pursuant to this section may be held in conjunction with a regular election of the  
10 governing body, general election, or a regular local or special election.

11 (5) If the qualified electors of a county vote to approve a type of marijuana business to be located  
12 in the jurisdiction, the governing body shall enter the approval into the records of the local government and  
13 notify the department of the election results.

14 (6) (a) If an election is held pursuant to this section in a county that contains within its limits a  
15 municipality of more than 5,000 persons according to the most recent federal decennial census:

16 (i) it is not necessary for the registered qualified electors in the municipality to file a separate  
17 petition asking for a separate or different vote on the question of whether to prohibit a category of marijuana  
18 business from being located in the municipality; and

19 (ii) the county shall conduct the election in a manner that separates the votes in the municipality  
20 from those in the remaining parts of the county.

21 (b) If a majority of the qualified electors in the county, including the qualified electors in the  
22 municipality, vote to approve a category of marijuana business to be located in the county, the county may  
23 allow that category of marijuana business to operate in the county.

24 (c) (i) If a majority of the qualified electors in the municipality vote to approve a category of  
25 marijuana business to be located in the municipality, the municipality may allow that type of marijuana business  
26 to operate in the municipality.

27 (ii) If a majority of the qualified electors in the municipality vote to prohibit a category of marijuana  
28 business from being located in the municipality, the municipality may not allow that type of marijuana business

1 to operate in the municipality.

2 (d) Nothing contained in this subsection (6) prevents any municipality from having a separate  
3 election under the terms of this section.

4 (7) (a) A county or municipality that has voted to approve a category of marijuana business to be  
5 located in the jurisdiction or a county in which the majority of voters voted to approve Initiative Measure No. 190  
6 in the November 3, 2020, general election may vote to prohibit the previously approved or allowed operations  
7 within the jurisdiction.

8 (b) An election regarding whether to approve or prohibit any of the marijuana business categories  
9 listed in subsection (1)(d) to be located within a local jurisdiction may be requested by:

10 (i) a simple majority of the persons elected to a board of county commissioners;

11 (ii) a simple majority of the persons elected to a city or town council;

12 (iii) filing a petition in accordance with 7-5-131 through 7-5-135 and 7-5-137 by the qualified  
13 electors of a county; or

14 (iv) filing a petition in accordance with 7-5-131 through 7-5-135 and 7-5-137 by the qualified  
15 electors of a municipality.

16 ~~(b)(c)~~ A vote overturning the approval of a category of marijuana business or prohibiting the  
17 previously permitted operation of marijuana businesses is effective on the 90th day after the local election is  
18 held.

19 (8) (a) The ballot containing the question of whether to approve or prohibit any of the marijuana  
20 business categories listed in subsection (1)(d) may include a separate question for each marijuana business  
21 category subject to approval or prohibition.

22 (b) The question must be in a form similar to the following:

23 [ ] FOR the operation of (marijuana business category) in (jurisdiction).

24 [ ] AGAINST the operation of (marijuana business category) in (jurisdiction).

25 (c) The language on the ballot must be the same in each jurisdiction in which an election is held  
26 under this section.

27 ~~(8)(9)~~ A local government may not prohibit the transportation of marijuana within or through its  
28 jurisdiction on public roads by any person licensed to do so by the department or as otherwise allowed by this

1 chapter."

2

3 **Section 22.** Section 16-12-302, MCA, is amended to read:

4 **"16-12-302. Fraudulent representation -- penalties.** (1) In addition to any other penalties provided  
5 by law, an individual who fraudulently represents to a law enforcement official that the individual is a cultivator,  
6 manufacturer, ~~adult-use dispensary~~, medical marijuana dispensary, testing laboratory, or marijuana transporter  
7 or has a marijuana worker permit is guilty of a civil fine not to exceed \$1,000.

8 (2) An individual convicted under this section may not be licensed under this chapter."

9

10 **Section 23.** Section 16-12-310, MCA, is amended to read:

11 **"16-12-310. Limit on local-option marijuana excise tax rate -- goods subject to tax.** (1) The rate  
12 of the local-option marijuana excise tax must be established by the election petition or resolution provided for in  
13 16-12-311, and the rate may not exceed 3%.

14 (2) The local-option marijuana excise tax is a tax on the retail value of all marijuana and marijuana  
15 products sold at ~~an adult-use dispensary~~ or a medical marijuana dispensary within a county.

16 (3) If a county imposes a local-option marijuana excise tax:

17 (a) 50% of the resulting tax revenue must be retained by the county;

18 (b) 45% of the resulting tax revenue must be apportioned to the municipalities on the basis of the  
19 ratio of the population of the city or town to the total county population; and

20 (c) the remaining 5% of the resulting tax revenue must be retained by the department to defray  
21 costs associated with administering 16-12-309 through 16-12-312 and 16-12-317. The funds retained by the  
22 department under this subsection (3)(c) must be deposited into the marijuana state special revenue account  
23 established under 16-12-111.

24 (4) For the purposes of this section, "tax revenue" means the combined taxes collected under any  
25 local-option marijuana excise tax collected on retail sales within the county."

26

27 **Section 24.** Section 16-12-311, MCA, is amended to read:

28 **"16-12-311. Local government excise tax-- election required -- procedure -- notice.** (1) A county

1 that has permitted ~~an adult-use dispensary or a~~ medical marijuana dispensary to operate within its borders  
 2 pursuant to 16-12-301 or a county in which the majority of voters voted to approve Initiative Measure No. 190 in  
 3 the November 3, 2020, general election, may not impose or, except as provided in this section, amend or  
 4 repeal a local-option marijuana excise tax unless the local-option marijuana excise tax question has been  
 5 approved by a majority of the qualified electors voting on the question.

6 (2) The local-option marijuana excise tax question may be presented to the qualified electors of a  
 7 county by a petition of the electors as provided in 7-5-131, 7-5-132, 7-5-134, 7-5-135, and 7-5-137 or by a  
 8 resolution of the governing body of the county.

9 (3) The petition or resolution referring the taxing question must state:

10 (a) the rate of the tax, which may not exceed 3% of the retail value of all marijuana and marijuana  
 11 products sold at ~~an adult-use dispensary or a~~ medical marijuana dispensary;

12 (b) the date when the tax becomes effective, which may not be earlier than 90 days after the  
 13 election; and

14 (c) the purposes that may be funded by the tax revenue.

15 (4) On receipt of an adequate petition, the county's governing body shall hold an election in  
 16 accordance with Title 13, chapter 1, part 5.

17 (5) (a) Before the local-option marijuana excise tax question is submitted to the electorate, the  
 18 county shall provide notice of the goods subject to the local-option marijuana excise tax by a method described  
 19 in 13-1-108.

20 (b) The notice must be given two times, with at least 6 days separating the notices. The first notice  
 21 must be given not more than 45 days prior to the election, and the last notice must be given not less than 30  
 22 days prior to the election.

23 (6) Notice of the election must be given as provided in 13-1-108 and include the information listed  
 24 in subsection (3) of this section.

25 (7) The question of the imposition of a local-option marijuana excise tax may not be placed before  
 26 the qualified electors more than once in any fiscal year."

27

28 **Section 25.** Section 16-12-312, MCA, is amended to read:

1           **"16-12-312. Tax administration.** (1) Not less than 90 days prior to the date that the local-option  
 2 marijuana excise tax becomes effective, the county shall notify the department of the results of the election and  
 3 coordinate with the department to facilitate the administration and collection of the local-option marijuana excise  
 4 taxes.

5           (2) The department shall establish by rule:

6           (a) the times that taxes collected by businesses are to be remitted to the department;

7           (b) the office or employee of the department responsible for receiving and accounting for the local-  
 8 option marijuana excise tax receipts;

9           (c) the office or employee of the department responsible for enforcing the collection of local-option  
 10 marijuana excise taxes and the methods and procedures to be used in enforcing the collection of local-option  
 11 marijuana excise taxes due; and

12           (d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the  
 13 administrative ordinance. The penalties may include:

14           (i) criminal penalties not to exceed a fine of \$1,000 or 6 months' imprisonment, or both;

15           (ii) civil penalties if the department prevails in a suit for the collection of local-option marijuana  
 16 excise taxes, not to exceed 50% of the local-option marijuana excise taxes found due plus the costs and  
 17 attorney fees incurred by the department in the action;

18           (iii) revocation of ~~an adult-use dispensary license or a~~ medical marijuana dispensary license held  
 19 by the offender; and

20           (iv) any other penalties that may be applicable for violation of an ordinance.

21           (3) The department's rules may also include:

22           (a) further clarification and specificity in the categories of goods that are subject to the local-option  
 23 marijuana excise tax;

24           (b) authorization for business administration and prepayment discounts. The discount  
 25 authorization may allow each vendor and commercial establishment to withhold up to 5% of the local-option  
 26 marijuana excise taxes collected to defray their costs for the administration of the tax collection.

27           (c) other administrative details necessary for the efficient and effective administration of the tax.

28           (4) A county and the department may exchange information collected under the provisions of this

1 chapter that is necessary to implement and administer a local-option marijuana excise tax or the tax collected  
2 under Title 15, chapter 64, part 1."

3

4 **Section 26.** Section 16-12-502, MCA, is amended to read:

5 **"16-12-502. Definitions.** As used in this part, the following definitions apply:

6 (1) "Referral physician" means an individual who:

7 (a) is licensed under Title 37, chapter 3; and

8 (b) is the physician to whom a minor patient's treating physician has referred the minor patient for  
9 physical examination and medical assessment.

10 (2) "Standard of care" means, at a minimum, the following activities when undertaken in person or  
11 ~~through the use of telemedicine~~ by a patient's treating physician or referral physician if the treating physician or  
12 referral physician is providing written certification for a patient with a debilitating medical condition:

13 (a) obtaining the patient's medical history;

14 (b) performing a relevant and necessary physical examination;

15 (c) reviewing prior treatment and treatment response for the debilitating medical condition;

16 (d) obtaining and reviewing any relevant and necessary diagnostic test results related to the  
17 debilitating medical condition;

18 (e) discussing with the patient and ensuring that the patient understands the advantages,  
19 disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;

20 (f) monitoring the response to treatment and possible adverse effects; and

21 (g) creating and maintaining patient records that remain with the physician.

22 ~~(3) "Telemedicine" has the meaning provided in 37-3-102.~~

23 ~~(4)~~(3) "Treating physician" means an individual who:

24 (a) is licensed under Title 37, chapter 3; and

25 (b) has a bona fide professional relationship with the individual applying to be a registered  
26 cardholder.

27 ~~(5)~~(4) "Written certification" means a statement signed by a treating physician or referral physician  
28 that meets the requirements of 16-12-509 and is provided in a manner that meets the standard of care."

1

2           **Section 27.** Section 16-12-509, MCA, is amended to read:

3           **"16-12-509. Written certification -- accompanying statements.** (1) The written certification  
4 provided by a physician must be made on a form prescribed by the department and signed and dated by the  
5 physician. The written certification must:

6           (a) include the physician's name, license number, and office address and telephone number on file  
7 with the board of medical examiners and the physician's business e-mail address, if any; and

8           (b) the name, date of birth, and debilitating medical condition of the patient for whom the physician  
9 is providing written certification.

10           (2) A treating physician or referral physician who is providing written certification for a patient shall  
11 provide a statement initialed by the physician that must:

12           (a) confirm that the physician is:

13           (i) the patient's treating physician and that the patient has been under the physician's ongoing  
14 medical care as part of a bona fide professional relationship with the patient; or

15           (ii) the patient's referral physician;

16           (b) confirm that the patient suffers from a debilitating medical condition;

17           (c) describe the debilitating medical condition, why the condition is debilitating, and the extent to  
18 which it is debilitating;

19           (d) confirm that the physician has assumed primary responsibility for providing management and  
20 routine care of the patient's debilitating medical condition after obtaining a comprehensive medical history and  
21 conducting a physical examination, ~~whether in person or, in accordance with subsection (4), through the use of~~  
22 ~~telemedicine~~, that included a personal review of any medical records maintained by other physicians and that  
23 may have included the patient's reaction and response to conventional medical therapies;

24           (e) describe the medications, procedures, and other medical options used to treat the condition;

25           (f) confirm that the physician has reviewed all prescription and nonprescription medications and  
26 supplements used by the patient and has considered the potential drug interaction with marijuana;

27           (g) state that the physician has a reasonable degree of certainty that the patient's debilitating  
28 medical condition would be alleviated by the use of marijuana and that, as a result, the patient would be likely to

1 benefit from the use of marijuana;

2 (h) confirm that the physician has explained the potential risks and benefits of the use of marijuana  
3 to the patient;

4 (i) list restrictions on the patient's activities due to the use of marijuana;

5 (j) specify the time period for which the use of marijuana would be appropriate, up to a maximum  
6 of 1 year;

7 (k) state that the physician will:

8 (i) continue to serve as the patient's treating physician or referral physician; and

9 (ii) monitor the patient's response to the use of marijuana and evaluate the efficacy of the  
10 treatment; and

11 (l) contain an attestation that the information provided in the written certification and  
12 accompanying statements is true and correct.

13 (3) A physician who is the second physician recommending marijuana for use by a minor shall  
14 submit:

15 (a) a statement initialed by the physician that the physician conducted a comprehensive review of  
16 the minor's medical records as maintained by the treating physician or referral physician;

17 (b) a statement that in the physician's professional opinion, the potential benefits of the use of  
18 marijuana would likely outweigh the health risks for the minor; and

19 (c) an attestation that the information provided in the written certification and accompanying  
20 statements is true and correct.

21 ~~(4) A physician who is providing written certification through the use of telemedicine:~~

22 ~~(a) shall comply with the administrative rules adopted for telemedicine by the board of medical  
23 examiners provided for in 2-15-1731 ; and~~

24 ~~(b) may not use an audio-only visit unless the physician has first established a physician-patient  
25 relationship through an in-person encounter.~~

26 ~~(5)~~(4) If the written certification states that marijuana should be used for less than 1 year, the  
27 department shall issue a registry identification card that is valid for the period specified in the written  
28 certification."



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**Section 28.** Section 16-12-515, MCA, is amended to read:

**"16-12-515. Legal protections -- allowable amounts.** (1) (a) A registered cardholder who has

elected to obtain marijuana and marijuana products through the system of licensed cultivators, manufacturers, or dispensaries may:

- (i) possess up to 1 ounce of usable marijuana; and
- (ii) purchase a maximum of ~~5 ounces~~ 1 ounce of usable marijuana a month and no more than 1 ounce of usable marijuana a day.

(b) (i) A registered cardholder may petition the department for an exception to the monthly limit on purchases. The request must be accompanied by a confirmation from the physician who signed the cardholder's written certification that the cardholder's debilitating medical condition warrants purchase of an amount exceeding the monthly limit.

(ii) If the department approves an exception to the limit, the approval must establish the monthly amount of usable marijuana that the cardholder may purchase and the limit must be entered into the seed-to-sale tracking system.

(2) Except as provided in 16-12-108 and subject to the provisions of subsection (7) of this section, an individual who possesses a registry identification card issued pursuant to this part may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

(a) the person cultivates, manufactures, possesses, or transports marijuana in the amounts allowed under this section; or

(b) the registered cardholder acquires or uses marijuana.

(3) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, solely for providing written certification for a patient with a debilitating medical condition.

(4) Nothing in this section prevents the imposition of a civil penalty or a disciplinary action by a

1 professional licensing board or the department of labor and industry if:

2 (a) a registered cardholder's use of marijuana impairs the cardholder's job-related performance; or

3 (b) a physician violates the standard of care or other requirements of this part.

4 (5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as  
5 provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity  
6 of the use of marijuana and marijuana products as permitted under this part.

7 (b) This subsection (5) does not prevent the arrest or prosecution of an individual who is in the  
8 vicinity of a registered cardholder's use of marijuana if the individual is in possession of or is using marijuana in  
9 excess of the amounts otherwise provided in this chapter and is not a registered cardholder.

10 (6) Possession of or application for a registry identification card does not alone constitute probable  
11 cause to search the person or individual or the property of the person or individual or otherwise subject the  
12 person or individual or property of the person or individual possessing or applying for the card to inspection by  
13 any governmental agency, including a law enforcement agency.

14 (7) The provisions of this section relating to protection from arrest or prosecution do not apply to an  
15 individual unless the individual has obtained a registry identification card prior to an arrest or the filing of a  
16 criminal charge. It is not a defense to a criminal charge that an individual obtains a registry identification card  
17 after an arrest or the filing of a criminal charge.

18 (8) (a) A registered cardholder is presumed to be engaged in the use of marijuana as allowed by  
19 this part if the person:

20 (i) is in possession of a valid registry identification card; and

21 (ii) is in possession of an amount of marijuana that does not exceed the amount permitted under  
22 this part.

23 (b) The presumption may be rebutted by evidence that the possession of marijuana was not for the  
24 purpose of alleviating the symptoms or effects of a registered cardholder's debilitating medical condition and  
25 exceeded the allowable amount of marijuana otherwise provided for in this part."  
26

27 **Section 29.** Section 16-12-533, MCA, is amended to read:

28 **"16-12-533. Rulemaking authority -- fees.** The department may adopt rules to implement this part

1 as authorized in this section to specify:

2 (1) the manner in which the department will consider applications for registry identification cards  
3 for individuals with debilitating medical conditions and renewal of registry identification cards;

4 (2) the acceptable forms of proof of Montana residency;

5 (3) notice and contested case hearing procedures for fines or registry identification card  
6 revocation, suspension, or modification;

7 (4) the procedures for obtaining fingerprints for the fingerprint and background check required  
8 under 16-12-508;

9 (5) the amount of usable marijuana that a registered cardholder who has elected not to use the  
10 system of licensees provided for under this chapter may possess; and

11 (6) the fees for cardholders. The annual cardholder license fee may not be less than ~~\$20~~ \$50."

12

13 Section 30. Section 33-22-138, MCA, is amended to read:

14 **"33-22-138. Coverage for telehealth services -- rulemaking.** (1) Each group or individual policy,  
15 certificate of disability insurance, subscriber contract, membership contract, or health care services agreement  
16 that provides coverage for health care services must provide coverage for health care services provided by a  
17 health care provider or health care facility by means of telehealth if the services are otherwise covered by the  
18 policy, certificate, contract, or agreement.

19 (2) A policy, certificate, contract, or agreement may not:

20 (a) impose restrictions involving:

21 (i) the site at which the patient is physically located and receiving health care services by means  
22 of telehealth; or

23 (ii) the site at which the health care provider is physically located and providing the services by  
24 means of telehealth; or

25 (b) distinguish between telehealth services provided to patients in rural locations and telehealth  
26 services provided to patients in urban locations.

27 (3) Coverage under this section must be equivalent to the coverage for services that are provided  
28 in person by a health care provider or health care facility.

1 (4) Nothing in this section may be construed to require:

2 (a) a health insurance issuer to provide coverage for services that are not medically necessary,  
3 subject to the terms and conditions of the insured's policy;

4 (b) coverage of an otherwise noncovered benefit;

5 (c) a health care provider to be physically present with a patient at the site where the patient is  
6 located unless the health care provider who is providing health care services by means of telehealth determines  
7 that the presence of a health care provider is necessary; or

8 (d) except as provided in ~~46-42-509~~ or as provided in Title 37 and related administrative rules, a  
9 patient to have a previously established patient-provider relationship with a specific health care provider in  
10 order to receive health care services by means of telehealth.

11 (5) Coverage under this section may be subject to deductibles, coinsurance, and copayment  
12 provisions. Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to  
13 other medical services covered under the plan may not be imposed on the coverage for services provided by  
14 means of telehealth.

15 (6) This section does not apply to disability income, hospital indemnity, medicare supplement,  
16 specified disease, or long-term care policies.

17 (7) The commissioner may adopt rules necessary to implement the provisions of this section.

18 (8) For the purposes of this section, the following definitions apply:

19 (a) "Health care facility" means a critical access hospital, hospice, hospital, long-term care facility,  
20 mental health center, outpatient center for primary care, or outpatient center for surgical services licensed  
21 pursuant to Title 50, chapter 5.

22 (b) "Health care provider" means an individual:

23 (i) licensed pursuant to Title 37, chapter 3, 4, 6, 7, 10, 11, 15, 17, 20, 22, 23, 24, 25, 26, or 35;

24 (ii) licensed pursuant to Title 37, chapter 8, to practice as a registered professional nurse or as an  
25 advanced practice registered nurse;

26 (iii) certified by the American board of genetic counseling as a genetic counselor; or

27 (iv) certified by the national certification board for diabetes educators as a diabetes educator.

28 (c) (i) "Telehealth" means the use of audio, video, or other telecommunications technology or

1 media, including audio-only communication, that is:

2 (A) used by a health care provider or health care facility to deliver health care services; and

3 (B) delivered over a secure connection that complies with state and federal privacy laws.

4 (ii) The term does not include delivery of health care services by means of facsimile machines or  
5 electronic messaging alone. The use of facsimile and electronic message is not precluded if used in conjunction  
6 with other audio, video, or telecommunications technology or media.

7 ~~(iii) For physicians providing written certification of a debilitating medical condition pursuant to 16-12-~~  
8 ~~509, the term does not include audio-only communication unless the physician has previously established a~~  
9 ~~physician-patient relationship through an in-person encounter."~~

10

11 **Section 31.** Section 37-2-305, MCA, is amended to read:

12 **"37-2-305. Telehealth services -- rulemaking authority.** (1) A person licensed under this title to  
13 provide health care in the ordinary course of business or practice of a profession may provide services by  
14 means of telehealth when the use of telehealth:

15 (a) is appropriate for the services being provided;

16 (b) meets the standard of care for delivery of services; and

17 (c) complies with any administrative rules for telehealth adopted by the board that licenses the  
18 health care provider.

19 (2) A board may adopt rules establishing requirements for the use of telehealth by its licensees.

20 (3) (a) For the purposes of this section, "telehealth" means the use of audio, video, or other  
21 telecommunications technology or media, including audio-only communication, that is:

22 (i) used by a health care provider or health care facility to deliver health care services; and

23 (ii) delivered over a secure connection that complies with the requirements of state and federal  
24 privacy laws.

25 (b) The term does not include delivery of health care services by means of facsimile machines or  
26 electronic messaging alone. The use of facsimile machines and electronic messaging is not precluded if used in  
27 conjunction with other audio, video, or telecommunications technology or media.

28 ~~(c) For physicians providing written certification of a debilitating medical condition pursuant to 16-12-~~

1 ~~509, the term does not include the use of audio-only communication unless the physician has previously~~  
2 ~~established a physician-patient relationship through an in-person encounter."~~

3

4 **Section 32.** Section 37-3-102, MCA, is amended to read:

5 **"37-3-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
6 apply:

7 (1) "ACGME" means the accreditation council for graduate medical education.

8 (2) "AOA" means the American osteopathic association.

9 (3) "Approved internship" means an internship training program of at least 1 year in a program that  
10 either is approved for intern training by the AOA or conforms to the standards for intern training established by  
11 the ACGME or successors. However, the board may, upon investigation, approve any other internship.

12 (4) "Approved medical school" means a school that either is accredited by the AOA or conforms to  
13 the education standards established by the LCME or the world health organization or successors for medical  
14 schools that meet standards established by the board by rule.

15 (5) "Approved residency" means a residency training program conforming to the standards for  
16 residency training established by the ACGME or successors or approved for residency training by the AOA.

17 (6) "Board" means the Montana state board of medical examiners provided for in 2-15-1731.

18 (7) "Community-integrated health care" means the provision of out-of-hospital medical services  
19 that an emergency care provider with an endorsement may provide as determined by board rule.

20 (8) "Department" means the department of labor and industry provided for in Title 2, chapter 15,  
21 part 17.

22 (9) "Emergency care provider" or "ECP" means a person licensed by the board, including but not  
23 limited to an emergency medical responder, an emergency medical technician, an advanced emergency  
24 medical technician, or a paramedic. An emergency care provider with an endorsement may provide community-  
25 integrated health care.

26 (10) "LCME" means the liaison committee on medical education.

27 (11) "Medical assistant" means an unlicensed allied health care worker who functions under the  
28 supervision of a physician, physician assistant, or podiatrist in a physician's or podiatrist's office and who

1 performs administrative and clinical tasks.

2 (12) "Physician" means a person who holds a degree as a doctor of medicine or doctor of  
3 osteopathy and who has a valid license to practice medicine or osteopathic medicine in this state.

4 (13) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the  
5 holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases,  
6 injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities,  
7 including electronic and technological means such as telemedicine. If a person who does not possess a license  
8 to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of  
9 this chapter performs acts constituting the practice of medicine, the person is practicing medicine in violation of  
10 this chapter.

11 (14) "Store-and-forward technology" means electronic information, imaging, and communication that  
12 is transferred, recorded, or otherwise stored in order to be reviewed at a later date by a health care provider or  
13 health care facility at a distant site without the patient present in real time. The term includes interactive audio,  
14 video, and data communication.

15 (15) (a) "Telemedicine" means the practice of medicine using interactive electronic communications,  
16 information technology, audio-only conversations, or other means between a licensee in one location and a  
17 patient in another location with or without an intervening health care provider. Telemedicine includes the  
18 application of secure videoconferencing or store-and-forward technology.

19 (b) The term does not mean an e-mail or instant messaging conversation or a message sent by  
20 facsimile transmission.

21 ~~(c) For physicians providing written certification of a debilitating medical condition pursuant to 16-12-~~  
22 ~~509, the term does not include audio-only communication unless the physician has previously established a~~  
23 ~~physician-patient relationship through an in-person encounter."~~

24  
25 **NEW SECTION. Section 33. Codification instruction.** [Section 10] is intended to be codified as an  
26 integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [section 10].

27 - END -