



GOVERNOR GREG GIANFORTE  
DIRECTOR BRENDAN BEATTY

## MEMORANDUM

TO: Economic Affairs Interim Committee

FROM: Brendan Beatty, Director

DATE: September 1, 2022

SUBJECT: 2023 Legislative Proposals for the Alcoholic Beverage Control Division  
(Red Tape Initiative related)

This document contains the Department of Revenue's (Department) proposed Red Tape Relief Initiative (Red Tape) related legislation for the Cannabis Control Division which has been approved through the Executive Planning Process/Office of Budget and Program Planning (OBPP) for introduction to the 2023 Legislature. These three proposals have been identified by OBPP and the Department as eliminating or reducing Red Tape as set forth in Governor Gianforte's Executive Order 2021-01 (EO). The Department requests the committee's review and approval of these proposals for pre-introduction.

While the Red Tape EO was specific to regulations, the Department's Red Tape Project Team's review of its regulations led to the identification of several statutes that meet the criteria of the EO. Working with Lt. Governor Juras, the Department now proposes legislative changes to remove or lessen statutory Red Tape.

The legislative proposals listed below include one or more of the following general criteria to guide the committee with its review: (1) Red Tape cleanup only; (2) changes to the statute which are more than cleanup, but address Red Tape only; and (3) changes that address Red Tape and present more substantive changes to statute. The intent with these proposals is to adhere to the EO and the Lt. Governor's direction. As such, this memorandum provides an outline of each Red Tape legislative proposal and an explanation of the Red Tape identified.

We have, in good faith, attempted to avoid any substantive changes to the laws with these Red Tape proposals which go beyond the scope of the Governor's EO. However, as is the case with any legislation, there may be instances or fact patterns which lead to unanticipated results. To the extent possible, these Red Tape legislative proposals attempt to avoid that result.

Please feel free to let me know if I can clarify anything or provide any additional information.

(2) Changes to the statute which are more than cleanup but address Red Tape only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
CCD	04-016-RT	Remove background check requirement for worker permit holders	None	16-12-129, 16-12-226

**Type of Red Tape from EO 1-2021:**

Unnecessary requirements.

**Red Tape Identified:**

The Economic Affairs Interim Committee (EAIC) stated that the intent of HB 701 was not to preclude individuals with criminal histories from obtaining worker permits. Based on this, there are no criminal convictions that serve as a basis to revoke, deny, or suspend a worker permit so the background checks is unnecessary.

**Red Tape Proposal:**

This proposal recommends removing the requirement that marijuana worker permit holders undergo a criminal background check and removing the requirement that marijuana worker permit holders report certain enumerated offenses to the Department. Additionally, based on EAIC's statements, the requirements under 16-12-129, MCA, for marijuana worker permit holders to undergo a criminal background check and the requirements under 16-12-226, MCA, for worker permit holders to report certain violations to the Department within 10 days should be removed.

(2) Changes to the statute which are more than cleanup but address Red Tape only.

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
CCD	04-017-RT	Clarify that marijuana dispensaries may sell CBD products	None	16-12-102, 16-12-208

**Type of Red Tape from EO 1-2021:**

Unnecessary (as unintended) restrictions.

**Red Tape Identified:**

There is unnecessary confusion about a marijuana dispensary's ability to legally-sell CBD products.

**Red Tape Proposal:**

Section 16-12-102, MCA, defines marijuana to exclude hemp, and hemp is defined to include cannabidiol (CBD). Section 16-12-208, MCA, provides that a dispensary may not sell hemp.

However, after overwhelming public comment, the Economic Affairs Interim Committee clearly stated that the prohibition on selling hemp is limited to hemp flower and hemp plants. ARM 42.39.409(13) clarifies this intent but the Department's proposal recommends adding permissive language to 16-12-208, MCA, to expressly allow dispensaries to sell CBD products and mitigate confusion.

(1) Red Tape cleanup only

Division	DOR File No.	Short Title	Fiscal Impact	Statutes Impacted
CCD	04-018-RT	Remove former Title 50 MCA references regarding inability to wholesale marijuana	None	16-12-206(1)(a)(iii)(A)

**Type of Red Tape from EO 1-2021:**

Unnecessary and outdated restrictions.

**Red Tape Identified:**

Section 16-12-206(1)(a)(iii)(A), MCA, is confusing and contradictory. It appears to unnecessarily restrict a marijuana licensee's ability to wholesale marijuana and marijuana products.

**Red Tape Proposal:**

Remove confusing and contradictory language in 16-12-206(1)(a)(iii)(A), MCA, that appears to restrict a marijuana licensee's ability to wholesale marijuana and marijuana products.

Title 50, Montana Code Annotated, and the former medical marijuana program required licensees to be vertically integrated and prohibited wholesaling between licensees. Section 16-12-206(1)(a)(iii)(A), MCA, appears to have pulled language in from 50-46-308, MCA, (repealed) requiring licensees to attest they will not divert product to other licensees unless pursuant to a sale of a business. This provision conflicts with 16-12-102(1)(a), 16-12-203(7)(a), MCA, and the overall intent of the MRTA to abandon the vertical integration requirement and to allow for wholesaling.