

## SJ 31: PD0001 – VERSION 3 SUMMARY

### DEFINITION OF HEMP

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Recommendation from the Department of Agriculture and Department of Revenue:

**Section 3.** Section 16-12-102, MCA, is amended to read:

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

*(Page 5)* (20) (a) "Marijuana" means all plant material from the genus Cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

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

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

**Section 13.** Section 16-12-208, MCA, is amended to read:

**"16-12-208. Restrictions.**

*(Page 27)* (7) An adult-use dispensary or medical marijuana dispensary may not sell or otherwise transfer hemp flower, hemp plants, or alcohol from a licensed premises.

**Note:** The Department of Agriculture is considering a comprehensive agency bill to address the ongoing and emerging changes in hemp production. The language in the bill will coordinate with the amendments in 16-12-102 and 16-12-208, MCA.

**UPDATE:** The Department of Agriculture likely will not get an additional agency bill approved by the Office of Budget and Program Planning for the 2023 session. However, the department is willing to work with committee members or individual legislators interested in pursuing the topic.

## PENALTIES FOR VIOLATION

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Recommendations from Senator Morigeau:

**Section 6.** Section 16-12-108, MCA, is amended to read:

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

(Page 14) (g) possession or consumption of marijuana or marijuana products or possession of marijuana paraphernalia:

(i) on the grounds of any property owned or leased by a school district, a public or private preschool, school, or postsecondary school as defined in 20-5-402;

(ii) in a school bus ~~or other form of public transportation;~~

(iii) in a health care facility as defined in 50-5-101; ~~or~~

(iv) on the grounds of any correctional facility; ~~or~~

~~(v) in a hotel or motel room;~~

(h) using marijuana or marijuana products in a location where smoking tobacco is prohibited;

(i) consumption of marijuana or marijuana products:

~~(i) in a public place, except as allowed by the department;~~

~~(ii) on trains, buses, and other forms of public transportation; or~~

~~(iii) in a hotel or motel room, except for a hotel or motel room that is designated as a smoking room and rented to a guest;~~

(j) conduct that endangers others;

(k) undertaking any task while under the influence of marijuana or marijuana products if doing so would constitute negligence or professional malpractice; or

(l) performing solvent-based extractions on marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food-grade ethanol unless licensed for this activity by the department.

~~(2) (a) A violation of subsections (1)(g)(i) through (iii) and subsections (h) and (i) are subject to the penalties provided in 50-40-115.~~

~~(b) In addition to the penalties provided in 50-40-115, a person in violation of subsection (1)(g)(iv) may be subject to administrative action by the department of corrections and the department of justice and violation may be subject to the penalties provided in 45-7-307.~~

~~(c) A violation of subsection (l) is subject to the penalties provided in 45-9-110(3).~~

**Section 21.** Section 20-1-220, MCA, is amended to read:

(Pages 37-38) "20-1-220. Use of **marijuana and tobacco products in public school building or on public school property prohibited.** (1) An individual may not use a tobacco product, vapor product, marijuana product, or alternative nicotine product in a public school building or on public school property.

(2) (a) Subsection (1) does not apply to the use of a tobacco product, vapor product, marijuana product, or alternative nicotine product in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product, vapor product, marijuana product, or alternative nicotine product.

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

(b) "Marijuana product" means a product that contains marijuana and is intended for use by a consumer. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, marijuana concentrates, and marijuana intended for use by smoking or vaping.

#### UPDATE ON DEFINITION OF MARIJUANA PRODUCT

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The Department of Revenue reviewed the amendments in 20-1-220, MCA and recognize the definition of "marijuana product" is different in 20-1-220, MCA than in 16-12-102(24). Primarily, the definition in 20-1-220 is broader as it includes all types of marijuana intended for use by smoking or vaping, which is necessary in the context of products prohibited in public schools.

The department would like to see consistency between the definitions, but recognize the Title 20 definition needs to be broader to include flower. Additionally, there are currently no THC limits for concentrates that are intended for use by smoking, such as vape cartridges. To address these issues, the department proposes amending the definition of "marijuana product" in 16-12-102 to:

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

#### IDENTITY OF CONTROLLING BENEFICIAL OWNERS

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Per request by Senator Ellsworth:

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

**"16-12-104. Department responsibilities -- licensure.**

(Page 10) (10) (a) The department shall provide the names and phone numbers of persons, including the names of individuals and persons who are controlling beneficial owners, licensed under this chapter and the city, town, or county where licensed premises are located to the public on the department's website. Except as provided in subsection (10)(b), the department may not disclose the physical location or address of a marijuana business.

**Section 8.** Section 16-12-110, MCA, is amended to read:

**"16-12-110. (Effective January 1, 2022) Legislative monitoring.**

(Page 18) (3) (a) The department shall periodically report to the economic affairs interim committee and submit a report to the legislature, as provided in 5-11-210, on persons who are licensed or registered pursuant to 16-12-203 and 16-12-503. The report must include:

(i) the number of cultivators, manufacturers, and dispensaries licensed pursuant to this chapter;

(ii) the names of all controlling beneficial owners for each licensee;

**Section 11.** Section 16-12-203, MCA, is amended to read:

**"16-12-203. (Effective January 1, 2022) Licensing types -- requirements -- limitations -- activities.** (1)

(Page 23) (h) The department shall furnish the names of all controlling beneficial owners to the economic affairs interim committee in accordance with 5-11-210.

## ADDITIONAL TIER LEVELS – FOR CONSIDERATION

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The Department of Revenue recently published MAR Notice No. 42-1058, creating a new rule and amending ARM 42.39.104 pertaining to the creation of additional canopy license tiers for marijuana cultivators. The department is proposing the rule changes after receiving requests from providers that are at the current tier 12 (maximum tier) to increase their cultivation space. The new rule creates three additional tiers and the amended rule creates corresponding licensing fees.

16-12-223, MCA currently lists canopy license tiers and corresponding licensing fees. 16-12-223, MCA is included as Section 15 of the committee bill and contains one amendment pertaining to intent regarding the ability to tier-up at any time. The committee can consider further amending the statute to include the new canopy tiers and corresponding fees:

**"16-12-223. (Effective January 1, 2022) Licensing of cultivators.** (1) (a) The department shall license cultivators according to a tiered canopy system. Except as provided in subsection (6), all cultivation that is licensed under this chapter may only occur at an indoor cultivation facility.

(b) Except as provided in subsection (6), the system shall include, at a minimum, the following license types:

...

(xiv) A tier 13 canopy license allows for a canopy of up to 60,000 square feet at up to ten indoor cultivation facilities.

(xv) A tier 14 canopy license allows for a canopy of up to 70,000 square feet at up to eleven indoor cultivation facilities.

(xvi) A tier 15 canopy license allows for a canopy of up to 80,000 square feet at up to twelve indoor cultivation facilities.

...

(4) Initial licensure and annual fees for these licensees are:

...

(l) \$32,000 for a cultivator with a tier 11 canopy license; **and**

(m) \$37,000 for a cultivator with a tier 12 canopy license;

~~(n) \$42,000 for a cultivator with a tier 13 canopy license;~~

~~(o) \$47,000 for a cultivator with a tier 14 canopy license; and~~

~~(p) \$52,000 for a cultivator with a tier 15 canopy license.~~

**Committee Options:**

Option A: Amend 16-12-223, MCA.

Option B: Leave as is.