



## **ECONOMIC AFFAIRS INTERIM COMMITTEE**

### **67th Montana Legislature**

#### **SENATE MEMBERS**

Kenneth Bogner – Presiding Officer  
Carlie Boland  
Jason Ellsworth  
Shane Morigeau

#### **HOUSE MEMBERS**

Alice Buckley  
Derek Harvey - ?Vice Presiding Officer  
Joshua Kassmier  
Brandon Ler  
Mark Noland  
Katie Sullivan

#### **COMMITTEE STAFF**

Erin Sullivan - Research Analyst  
Jameson Walker - Attorney  
Fong Hom - Secretary

## **MINUTES LOG**

December 9, 2021  
Room 137, Zoom Conference Call  
Capitol Building  
Helena, Montana

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#### **MEMBERS PRESENT:**

Sen. Kenneth Bogner, Chair (R)  
Rep. Derek Harvey, Vice Chair (D)  
Sen. Carlie Boland (D)  
Sen. Jason Ellsworth (R)  
Rep. Joshua Kassmier (R)  
Sen. Shane Morigeau (D)  
Rep. Katie Sullivan (D)

#### **MEMBERS EXCUSED:**

Rep. Alice Buckley (D)  
Rep. Brandon Ler (R)  
Rep. Mark Noland (R)

#### **STAFF PRESENT:**

Erin Sullivan, Research Analyst  
Jameson Walker, Attorney  
Fong Hom, Secretary

## **AGENDA (Attachment 1)**

### **NO VISITORS' LIST**

#### **COMMITTEE ACTION**

The committee held a videoconference meeting to discuss the proposed amendments to the marijuana administrative rules in: MAR Notice No. 42-1033, MAR Notice No. 42-1040, and MAR Notice No. 1044. After hearing a presentation by the Department of Revenue, committee questions, and public comment, the committee voted to:

- recommend to the Revenue Interim Committee to informally object to all three MAR notices until the Department of Revenue and two EAIC liaisons meet to discuss additional changes to the rules;
- suspend its committee rules on public notice requirements in order to reconvene on December 13; and
- reconvene on December 13 to review the changes to the rules.

Additionally, the committee:

- requested staff to invite the Revenue Interim Committee to attend the December 13 meeting so that committee could either continue or withdraw the informal objection upon the recommendation of the committee; and
- renewed its informal objection to the Department of Labor and Industry's rule on Independent Contractors (MAR Notice 24-35-376)

#### **CALL TO ORDER/ROLL CALL**

09:04:39 Presiding Officer Bogner called the meeting to order at 9:04 a.m. The committee secretary called roll. (Attachment 3) Rep. Buckley was excused and left her proxy with Rep. Harvey; Rep. Ler was excused and left his proxy with Rep. Kassmier; and Rep. Noland was excused and left his proxy with Sen. Ellsworth.

09:05:52 Sen. Bogner gave a brief overview of the meeting's agenda.

#### **ADMINISTRATIVE RULE REVIEW**

##### **Rule Review Update**

09:07:04 Jameson Walker, Committee Attorney, gave a rule review update. (Exhibit 1) Mr. Walker discussed MAR Notice Number 37-967: Adoption and amendment of rules pertaining to marijuana sampling.

#### **Cannabis Control Division's Proposed Amendments to Rules**

09:10:41 Kristan Barbour, Administrator, Cannabis Control Division, and Courtney Cosgrove, Attorney for the Cannabis Control Division, Department of Revenue, discussed the proposed amendments.

#### **MAR Notice No. 42-1033**

09:11:34 Ms. Barbour and Ms. Cosgrove presented the proposed changes to MAR Notice No. 42-1033. (Exhibit 2)

#### **Committee Questions**

09:18:25 Sen. Ellsworth asked Ms. Cosgrove about the combined tier licenses.

09:20:53 Sen. Ellsworth asked Ms. Cosgrove to explain the physical size difference between a Tier 4 and a Tier 12 canopy license.

### **New Rule III Marijuana Cultivator Licenses**

09:24:11 Ms. Cosgrove discussed proposed changes to New Rule III, Marijuana Cultivator Licenses(13).

### **Committee Questions**

09:24:58 Sen. Ellsworth asked about a Tier 12 canopy license that allows for a canopy size of up to 50,000 sq. ft. and up to nine cultivation facilities.

09:26:12 Ms. Cosgrove clarified that the 50,000 sq. ft. can be divided between those 9 indoor cultivation facilities, it's not 50,000 x 9, it's 50,000 total that can be at 9 different locations.

### **New Rule IV Marijuana Dispensary Licenses**

09:26:40 Ms. Cosgrove discussed proposed changes to New Rule IV, Marijuana Dispensary Licenses.

### **Committee Questions**

09:28:54 Rep. Sullivan asked Ms. Cosgrove why a CBD flower can't be sold in a medical marijuana dispensary but can be manufactured as an oil or an edible and then sold in a medical dispensary.

09:30:03 Rep. Sullivan asked Ms. Cosgrove if this would prohibit the sale of CBD flower throughout the state of Montana and that no one can sell it except in an agricultural sense.

### **New Rule IV, Marijuana Dispensary Licenses, New Rule VII, Marijuana Testing Laboratory Licenses, New Rule VIII, Marijuana Storage Facility Endorsement, New Rule X, General Labeling Requirements**

09:33:33 Ms. Cosgrove discussed the proposed changes to New Rule IV, Marijuana Dispensary Licenses; New Rule VII, Marijuana Testing Laboratory Licenses; New Rule VIII, Marijuana Storage Facility Endorsement; New Rule X, General Labeling Requirements.

### **Committee Questions**

09:38:46 Sen. Ellsworth asked Mr. Walker how many times the word "marijuana" was used in the bill.

09:39:50 Sen. Ellsworth expressed his concern over the use of the word "cannabis" on the warning label.

### **New Rule XIV, Labeling Requirements for Marijuana Concentrates and Extracts**

09:42:19 Ms. Cosgrove discussed the proposed changes to New Rule XIV, Labeling Requirements for Marijuana Concentrates and Extracts, and proposed changes to 42.39.102 Definitions.

### **MAR Notice No. 42-1040**

09:45:51 Ms. Cosgrove discussed proposed changes to MAR Notice No. 42-1040 **(Exhibit 3)** She also discussed Licensed Premises – Security Requirements.

09:48:36 Sen. Ellsworth commented on the motion detection devices and whether or not those devices are inspected on a regular basis and if the recordings are stored on the Cloud or in secured storages.

### **New Rule, Suspension or Revocation of Worker Permits and New Rule General Licensee Requirements**

09:51:51 Ms. Cosgrove discussed the proposed changes on New Rule, Suspension or Revocation of Worker Permits; New Rule General Licensee Requirements.

### **Committee Questions**

09:53:04 Sen. Ellsworth commented on the destruction of returned marijuana or marijuana products.

### **MAR Notice No. 42-1042**

09:54:54 Ms. Cosgrove presented proposed amendments to MAR Notice No. 42-1042. [\(Exhibit 4\)](#). She discussed changes to 42-39.117, Denial of Registry Identification Card Application or Revocation of Registry Identification Card.

### **Committee Questions**

09:56:31 Sen. Ellsworth discussed the intent in HB 701 regarding requests for an increase in the amount of marijuana that can purchased under a medical card.

### **Proposed Changes to 42.39.202, Seed-to-Sale Tracking System User Requirements and 42.39.311, Reporting Requirements**

09:58:48 Ms. Cosgrove discussed proposed changes to 42.39.202, Seed-to-Sale Tracking System User Requirements; and 42.39.311, Reporting Requirements.

### **Committee Questions**

10:01:28 Sen. Ellsworth discussed the importance of notifying the department of any proposed rule changes.

10:03:47 Rep. Sullivan asked Ms. Cosgrove about using the symbols for marijuana and cannabis on labels and how many businesses would be impacted in terms of having to redo the labels on packages.

10:05:13 Rep. Harvey asked Ms. Barbour if she has had any opportunities to meet with current testing facilities before the proposed rules go into effect.

10:07:02 Rep. Harvey asked Ms. Cosgrove about the application date for laboratories to apply for a license.

10:08:31 Rep Harvey asked Ms. Cosgrove about the requirement that labs have to be certified through the state lab and the inspection of the facilities by the state to see if the new labs are meeting the requirements.

10:10:46. Rep. Harvey asked if there's been any discussion on the maximum number of labs the state feels that it can handle as far as oversight.

10:11:20 Sen. Ellsworth commented on a cultivator selling to another cultivator.

10:18:00 Sen. Morigeau commented on the legislative intent of the combined use license and the opportunity for tribes to be able to tier up equally and fairly like everybody else. Sen. Morigeau asked Mr. Walker to look into the statutory interpretation and construction of the combined use license.

10:20:38 Mr. Walker commented that the department is relying on 16-12-225, MCA.

10:25:08 Sen. Ellsworth agreed with Sen. Morigeau that it was always the intent that the Indians have the same footing, the same opportunities to tier up, and to not limit them.

### **Public Comment**

10:31:18 Joanna Barney, Sacred Sun Farms  
10:37:52 Vern Anderson, LIFTT  
10:40:28 Barbie Turner  
10:45:44 Antonette Lininger, Montana Cannabis Industry Association  
10:49:39 Erica Siate  
10:53:42 Jonathan Speare, White Buffalo Laboratories  
10:59:23 Kate Cholewa, Montana Cannabis Industry Association  
11:02:09 Pepper Petersen, Montana Cannabis Guild  
11:12:16 Adam Arnold, Bozeman  
11:15:17 Nathan Kosted, Stillwater Laboratories

### **Committee Questions/Discussion**

11:24:03 Sen. Ellsworth commented on some of the testimony from the public and said he is putting the department on notice that they need to take this more seriously.  
11:29:58 Sen. Bogner asked Mr. Walker to take the committee through options for objections.  
11:30:22 Mr. Walker discussed the informal objection under 2-4-305(9), MCA, that the committee can pursue.

**BREAK** (reconvened at 12:00)

### **Motion**

12:02:32 Sen. Ellsworth moved that the committee informally object to all rules until December 22, to meet again, agree on the rule changes, and lift the informal objection.

### **Discussion on the Motion**

12:06:22 Sen. Morigeau supports the motion.  
12:08:34 Mr. Walker discussed the technical aspects of Sen. Ellsworth's motion.  
12:09:37 Sen. Bogner asked Sen. Ellsworth if he has been in contact with the Revenue Interim Committee.  
Sen. Ellsworth said he had discussed the intent of the EAIC objecting formally with Sen. Jill Cohenour, Presiding Officer of the Revenue Interim Committee and Sen. Greg Hertz, member of the Revenue Interim Committee.  
12:10:54 Rep. Harvey asked about the EAIC meeting jointly with the RIC on December 22.  
12:12:02 Mr. Walker and Erin Sullivan, Research Analyst, responded.  
12:12:50 Sen. Ellsworth said he doesn't think that it is necessary to do a joint meeting.  
12:14:02 Mr. Walker said that the committee needs to consider that the next time an agency files with the Montana Secretary of State for a rule notice, that rule notice will be published on December 25, and the Secretary of State requires you to pre-file a rule notice a week before publication. The deadline for the department to file the rules with the Secretary of State in order to have the rules done by January 1, is December 14.

### **Substitute Motion**

12:15:33 Sen. Ellsworth made a substitute motion to have a meeting on Monday, December 13, at 2:00 p.m., to discuss the rules.

### **Discussion on Substitute Motion**

12:17:41 Mr. Walker said that the rules for public notice are set at 10 days or less unless the committee is considering a statutory initiative petition. The committee can't take any action during a special meeting with less than 10 days' notice.  
Sen. Ellsworth discussed suspending the committee rules.  
Sen. Ellsworth added to his substitute motion to include suspension of the EAIC rules.

### **Vote**

12:19:52 The motion to meet on December 13 to review amendments to the Department of Revenue's cannabis passed with Rep. Noland, Rep. Buckley, and Rep. Ler voting aye by proxy.

### **Further Discussion**

12:20:50 Mr. Walker wanted to make sure that the motion included objecting to the rules or to recommend that the Revenue Interim Committee also object to the rules.  
Sen. Bogner said in that Sen. Ellsworth had voted to suspend the rules to meet on the 13<sup>th</sup> as well as to object to the rules package.  
12:22:03 Mr. Walker said he will get that off to the Revenue Interim Committee. At the last EAIC meeting, there was an informal objection to Rule No. 24-35-376, the Independent Contractors. He said that it is up to the committee to renew its objection to No. 24-35-376.

### **Motion**

12:27:22 Sen. Morigeau moved to continue the informal objection to MAR Notice No. 24-35-376, pursuant to 2-4-305(9).

### **Vote**

12:28:53 The motion passed unanimously on a voice vote with Representatives Ler, Noland, and Buckley voting aye by proxy.

### **Other Business**

12:29:21 Mr. Walker discussed a technical note on the committee's action relating to having the RIC make an informal objection.  
12:32:41 Sen. Bogner asked Ms. Barbour and Ms. Cosgrove if they wanted to add anything. Ms. Barbour said the department is always open and willing to work with this committee.

### **GENERAL PUBLIC COMMENT** - None

### **ADJOURNMENT**

12:33:51 Sen. Bogner adjourned the meeting at 12:33 p.m.