

Unofficial Draft Copy - SJ31.V2 Committee Bill

As of: 2022/04/29 10:33:08

Drafter: Erin Sullivan, 406-444-3594

67th Legislature

PD 0001

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MARIJUANA LAWS; CLARIFYING
6 LEGISLATIVE MONITORING DUTIES; REVISING DEFINITIONS; CLARIFYING PERMISSIVE ACTS AND
7 EXCEPTIONS FOR REGISTERED CARDHOLDERS; REVISING PENALTIES FOR SUSPENDED LICENSES;
8 COMBINING SECTIONS ON LEGISLATIVE MONITORING; REMOVING IDENTITY DISCLOSURE
9 REQUIREMENT FOR LICENSEE COMPLAINTS; REMOVING OUTDATED DATES; REMOVING
10 REQUIREMENT OF BACKGROUND CHECKS; CLARIFYING MINIMUM AGE TO ENTER A MARIJUANA
11 BUSINESS; CLARIFYING LEGISLATIVE INTENT ON CULTIVATORS ABILITY TO INCREASE TIERS;
12 REVISING REQUIREMENTS FOR COMBINED-USE LICENSE; REVISING REPORTING REQUIREMENTS
13 FOR EMPLOYEE CONVICTIONS OR VIOLATIONS; COMBINING SECTIONS ON FRAUDULENT
14 REPRESENTATION; CLARIFYING FORMULA FOR MUNICIPAL TAX REVENUE ALLOCATION; REMOVING
15 CONFLICTING NOTICE REQUIREMENTS; AMENDING SECTIONS 5-5-225, 15-64-101, 16-12-106, 16-12-
16 108, 16-12-109, 16-12-110, 16-12-125, 16-12-129, 16-12-203, 16-12-207, 16-12-222, 16-12-223, 16-12-225,
17 16-12-226, 16-12-302, 16-12-310, AND 16-12-311, MCA; REPEALING SECTIONS 16-12-524 AND 16-12-532,
18 MCA; AND PROVIDING EFFECTIVE DATES."

19
20 WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony
21 relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act.
22 Specifically, the committee received testimony that section 16-12-223, MCA, only allowed qualifying marijuana
23 cultivator licensees to increase production tiers at the licensee's renewal and not at the licensee's discretion.
24 The committee disagreed with this interpretation and provided its analysis. The issue was resolved to the
25 committee's satisfaction.

26 WHEREAS, this bill amends section 16-12-223, MCA, only to remove all existing doubt whether the
27 Legislature intended to allow a qualifying cultivator licensee to increase production tiers at their discretion.
28

Commented [ES1]: Version 2: From 6/22 memo: Tier-up analysis

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

2

3 **Section 1.** Section 5-5-225, MCA, is amended to read:

4 **"5-5-225. Children, families, health, and human services interim committee.** The children,
5 families, health, and human services interim committee has administrative rule review, draft legislation review,
6 program evaluation, and monitoring functions for the department of public health and human services and the
7 entities attached to the department for administrative purposes, except the program evaluation of the state lab
8 of the department that administers provisions under the Montana Marijuana Regulation and Taxation Act."

9

10 **Section 2.** Section 15-64-101, MCA, is amended to read:

11 **"15-64-101. Definitions.** As used in this part, the following definitions apply:

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

13 ~~(2) "Customer" means a person to whom a sale of marijuana or a marijuana product is made.~~

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

15 ~~(4) "Dispensary" means an adult-use dispensary or a medical marijuana dispensary.~~

16 ~~(5) "Licensee" means a licensee operating an adult-use dispensary or a medical marijuana~~
17 ~~dispensary.~~

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

19 ~~(7) "Marijuana product" has the meaning provided in 16-12-102.~~

20 ~~(8) "Medical marijuana dispensary" has the meaning provided in 16-12-102.~~

21 ~~(9) "Person" means an individual, firm, partnership, corporation, association, company, committee,~~
22 ~~other group of persons, or other business entity, however formed.~~

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

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

26 (11) "Sale" or "sell" means any transfer of marijuana or marijuana products for consideration,
27 exchange, barter, gift, offer for sale, or distribution in any manner or by any means."
28

Commented [ES2]: Version 1: This section moves monitoring duties of the state lab as it pertains to testing requirements for marijuana to EAIC. See new (1)(f) in Section 6.

Commented [ES3]: Version 2: From 6/22 meeting memo: Inconsistency in definitions

Amendments to this section are to change the term "purchaser" to "customer"

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1 Section 3. Section 16-12-106, MCA, is amended to read:

2 "16-12-106. Personal use and cultivation of marijuana -- penalties. (1) Subject to the limitations in
3 16-12-108, the following acts are lawful and may not be an offense under state law or the laws of any local
4 government within the state, be a basis to impose a civil fine, penalty, or sanction, or be a basis to detain,
5 search, or arrest, or otherwise deny any right or privilege, or to seize or forfeit assets under state law or the
6 laws of any local government for a person who is 21 years of age or older, unless the person is a registered
7 cardholder:

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

11 (b) transferring, delivering, or distributing without consideration, to a person who is 21 years of age or
12 older, unless the person is a registered cardholder, 1 ounce or less of usable marijuana, except that not more
13 than 8 grams may be in a concentrated form and not more than 800 milligrams of THC may be in edible
14 marijuana products meant to be eaten or swallowed in solid form;

15 (c) in or on the grounds of a private residence, possessing, planting, or cultivating up to two mature
16 marijuana plants and two seedlings, or four mature marijuana plants and four seedlings for a registered
17 cardholder, and possessing, harvesting, drying, processing, or manufacturing the marijuana, provided that:

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

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

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

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

28 (d) assisting another person who is at least 21 years of age, unless the person is a registered

Commented [ES4]:

Version 1: Amendments to this section are to add clarifying language for permissive acts for registered cardholders

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1 cardholder, in any of the acts permitted by this section, including allowing another person to use one's personal
2 residence for any of the acts described in this section; and

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

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

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

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

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

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

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

22 (a) for a first violation, the person's choice between a civil fine not exceeding \$200 or completing up to
23 4 hours of community service in lieu of the fine;

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

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

28 (8) A person may not be denied adoption, custody, or visitation rights relative to a minor solely for

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1 conduct that is permitted by this chapter.

2 (9) A person may not be denied access to or priority for an organ transplant or denied access to
3 health care solely for conduct that is permitted by this chapter."
4

5 **Section 4.** Section 16-12-108, MCA, is amended to read:

6 **"16-12-108. Limitations of act.** (1) This chapter does not permit:

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

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

12 (c) smoking or consuming marijuana while riding in the passenger seat within an enclosed
13 compartment of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being
14 operated;

15 (d) delivery or distribution of marijuana or marijuana products, with or without consideration, to a
16 person under 21 years of age, unless the person is a registered cardholder;

17 (e) purchase, consumption, or use of marijuana or marijuana products by a person under 21 years of
18 age, unless the person is a registered cardholder;

19 (f) possession or transport of marijuana or marijuana products by a person under 21 years of age
20 unless the underage person is a registered cardholder or is at least 18 years of age and is an employee of a
21 marijuana business licensed under this chapter and engaged in work activities;

22 (g) possession or consumption of marijuana or marijuana products or possession of marijuana
23 paraphernalia:

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

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

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

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

Commented [E55]:

Version 1: Amendments in this section add exceptions for registered cardholders for age restrictions on delivery, distribution, purchase, and consumption.

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- 1 (v) in a hotel or motel room;
- 2 (h) using marijuana or marijuana products in a location where smoking tobacco is prohibited;
- 3 (i) consumption of marijuana or marijuana products in a public place, except as allowed by the
- 4 department;
- 5 (j) conduct that endangers others;
- 6 (k) undertaking any task while under the influence of marijuana or marijuana products if doing so
- 7 would constitute negligence or professional malpractice; or
- 8 (l) performing solvent-based extractions on marijuana using solvents other than water, glycerin,
- 9 propylene glycol, vegetable oil, or food-grade ethanol unless licensed for this activity by the department.
- 10 (2) A person may not cultivate marijuana in a manner that is visible from the street or other public
- 11 area.
- 12 (3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that
- 13 allows use of marijuana by a registered cardholder.
- 14 (4) Nothing in this chapter may be construed to:
- 15 (a) require an employer to permit or accommodate conduct otherwise allowed by this chapter in any
- 16 workplace or on the employer's property;
- 17 (b) prohibit an employer from disciplining an employee for violation of a workplace drug policy or for
- 18 working while intoxicated by marijuana or marijuana products;
- 19 (c) prevent an employer from declining to hire, discharging, disciplining, or otherwise taking an
- 20 adverse employment action against an individual with respect to hire, tenure, terms, conditions, or privileges of
- 21 employment because of the individual's violation of a workplace drug policy or intoxication by marijuana or
- 22 marijuana products while working;
- 23 (d) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for
- 24 a debilitating medical condition; or
- 25 (e) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or
- 26 discrimination pursuant to 49-1-102.
- 27 (5) Nothing in this chapter may be construed to prohibit a person from prohibiting or otherwise
- 28 regulating the consumption, cultivation, distribution, processing, sale, or display of marijuana, marijuana

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1 products, and marijuana paraphernalia on private property the person owns, leases, occupies, or manages,
2 except that a lease agreement executed after January 1, 2021, may not prohibit a tenant from lawfully
3 possessing and consuming marijuana by means other than smoking unless required by federal law or to obtain
4 federal funding.

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

8 (7) Unless specifically exempted by this chapter, the provisions of Title 45, chapter 9, apply to the
9 conduct of consumers, licensees, and registered cardholders."
10

11 **Section 5.** Section 16-12-109, MCA, is amended to read:

12 **"16-12-109. (Effective January 1, 2022) Unlawful conduct by licensees -- penalties.** (1) If the
13 department has reasonable cause to believe that a licensee has violated a provision of this chapter or a rule of
14 the department, it may, in its discretion and in addition to any other penalties prescribed:

- 15 (a) reprimand a licensee;
- 16 (b) revoke the license of the licensee;
- 17 (c) suspend the license for a period of ~~not more than 3 months~~up to 1 year;
- 18 (d) refuse to grant a renewal of the license after its expiration; or
- 19 (e) impose a civil penalty not to exceed \$3,000.

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

- 22 (a) compliance with the provisions of this chapter within the prior 3 years;
- 23 (b) the licensee has made good faith efforts to prevent a violation; or
- 24 (c) the licensee has cooperated in the investigation of the violation and the licensee or an employee

25 or agent of the licensee accepts responsibility.

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

- 28 (a) prior warnings about compliance problems;

Commented [ES6]:

Version 1: Amendments in this section:
Resolve conflicting provisions regarding the length of
time the department may suspend a license;
Add exceptions for registered cardholders to penalties
regarding age restrictions for sales, distribution, or
transfers

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1 (b) prior violations of the provisions of this chapter within the past 3 years;

2 (c) lack of written policies governing employee conduct;

3 (d) additional violations revealed during the course of the investigation;

4 (e) efforts to conceal a violation;

5 (f) intentional violations; or

6 (g) involvement of more than one patron or employee in a violation.

7 (4) For each licensing program regulated by the department under this chapter, the department is

8 designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential

9 criminal justice information regarding licensees and license applicants and regarding possible unlicensed

10 practice.

11 (5) The department shall revoke and may not reissue a license or endorsement belonging to a

12 person:

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

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

15 (c) who transports marijuana or marijuana products outside of Montana, unless otherwise allowed by

16 federal law;

17 (d) who operates a carbon dioxide or hydrocarbon extraction system without obtaining a

18 manufacturing license;

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

20 (f) who sells, distributes, or transfers marijuana or marijuana products to a person the licensee knows

21 or should know is under 21 years of age, unless the person is a registered cardholder.

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

23 revocation.

24 (7) (a) Review of a department action imposing a fine, suspension, or revocation under this chapter

25 must be conducted as a contested case hearing before the department's office of dispute resolution under the

26 provisions of the Montana Administrative Procedure Act.

27 (b) A person may appeal any decision of the department concerning the issuance, rejection,

28 suspension, or revocation of a license provided for by this chapter to the district court in the county in which the

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1 person operates or proposes to operate. If a person operates or seeks to operate in more than one county, the
2 person may seek judicial review in the district court with jurisdiction over actions arising in any of the counties
3 where it operates or seeks to operate.

4 (c) An appeal pursuant to subsection (7)(b) must be made by filing a complaint setting forth the
5 grounds for relief and the nature of relief demanded with the district court within 30 days following receipt of
6 notice of the department's final decision."

7

8 **Section 6.** Section 16-12-110, MCA, is amended to read:

9 "**16-12-110. (Effective January 1, 2022) Legislative monitoring.** (1) The economic affairs interim
10 committee shall provide oversight of ~~the department's~~ activities pursuant to this chapter, including but not
11 limited to monitoring of:

12 (a) the number of licensees;

13 (b) issues related to the cultivation, manufacture, sale, testing, and use of marijuana; ~~and~~

14 (c) the development, implementation, and use of the seed-to-sale tracking system established in
15 accordance with 16-12-105;

16 ~~(d) the number of registered cardholders;~~

17 ~~(e) the number and type of violations committed by registered cardholders, together with the penalties
18 imposed on registered cardholders by the department; and~~

19 ~~(f) testing procedures performed by the state laboratory in accordance with this chapter.~~

20 (2) The economic affairs interim committee shall identify issues likely to require future legislative
21 attention and develop legislation to present to the next regular session of the legislature.

22 (3) (a) The department shall periodically report to the economic affairs interim committee and submit
23 a report to the legislature, as provided in 5-11-210, on persons who are licensed or registered pursuant to 16-
24 12-203 ~~and 16-12-503~~. The report must include:

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

26 (ii) the number and type of violations committed by licensees;

27 (iii) the number of licenses revoked; ~~and~~

28 (iv) the amount of marijuana and marijuana products cultivated and sold pursuant to this chapter;

Commented [ES7]:

Version 1: Amendments in this section combine legislative monitoring duties into one section.

Commented [ES8]:

Per committee discussion, this amendment moves oversight of the state lab as it pertains to marijuana from Children, Families, Health & Human Services to Economic Affairs

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1 (v) the number of applications for registry identification cards and the number of registered
2 cardholders approved;
3 (vi) the nature of the debilitating medical conditions of the registered cardholders;
4 (vii) the number of registry identification cards and licenses revoked; and
5 (viii) the number of physicians providing written certification for registered cardholders and the number
6 of written certifications each physician has provided.
7 (b) The report may not provide:
8 (i) any identifying information of cultivators, manufacturers, and dispensaries except basic geographic
9 or other statistical information; or
10 (ii) any identifying information of registered cardholders or physicians.
11 (4) The report on inspections required under 16-12-210 must include, at a minimum, the following
12 information for both announced and unannounced inspections:
13 (a) the number of inspections conducted, by canopy licensure tier;
14 (b) the number of licensees that were inspected more than once during the year;
15 (c) the number of inspections that were conducted because of complaints made to the department;
16 and
17 (d) the types of enforcement actions taken as a result of the inspections.
18 (5) The board of medical examiners shall report annually to the economic affairs interim committee on
19 the number and types of complaints the board has received involving physician practices in providing written
20 certification for the use of marijuana, pursuant to 37-3-203."
21
22 **Section 7.** Section 16-12-125, MCA, is amended to read:
23 **"16-12-125. (Effective January 1, 2022) Hotline.** (1) The department shall create and maintain a
24 hotline to receive reports of suspected abuse of the provisions of this chapter.
25 (2) An individual making a complaint must be a resident and shall provide the individual's name, street
26 address, and phone number.
27 (3) ~~(a)~~—The department shall provide a copy of the complaint to the person or licensee that is the
28 subject of the complaint.

Commented [E59]: Version 2: From 6/22 memo:
Identity of complainant

Amendment removes the requirement of the
department to disclose the complainant's identity to the
licensee

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1 ~~(b) The department may not redact the individual's name or city of residence from the complaint copy.~~

2 (4) The department may:

3 (a) investigate reports of suspected abuse of the provisions of this chapter; or

4 (b) refer reports of suspected abuse to the law enforcement agency having jurisdiction in the area

5 where the suspected abuse is occurring."

6
7 **Section 8.** Section 16-12-129, MCA, is amended to read:

8 **"16-12-129. (Effective January 1, 2022) Department to conduct background checks.** (1) In

9 addition to any other requirement imposed under this chapter, before issuing any license under this chapter the
10 department shall conduct:

11 (a) a fingerprint-based background check meeting the requirements for a fingerprint-based
12 background check by the department of justice and the federal bureau of investigation in association with an
13 application for initial licensure and every 5 years thereafter; and

14 (b) a name-based background check in association with an application for initial licensure and each
15 year thereafter except years that an applicant is required to submit fingerprints for a fingerprint-based
16 background check.

17 (2) For the purpose of the background records check required under subsection (1), the department
18 shall obtain fingerprints from each individual listed on an application submitted under this chapter and each
19 individual who has a controlling beneficial ownership or financial interest in the license or prospective license,
20 including:

21 (a) each partner of an applicant that is a limited partnership;

22 (b) each member of an applicant that is a limited liability company;

23 (c) each director and officer of an applicant that is a corporation;

24 (d) each individual who holds a 5% financial interest in the license applicant or is a controlling
25 beneficial owner of the person applying for the license; ~~and~~

26 (e) each individual who is a partner, member, director, or officer of a legal entity that holds a 5%
27 financial interest in the license applicant or is a controlling beneficial owner of the person applying for the
28 license; ~~and~~

Commented [E510]:

Version 1: Amendments remove outdated dates.

Version 2: From 6/22 memo: Background checks

Amendments remove the requirement of background checks by the department.

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1 (f) a person designated by the applicant as responsible for operating the licensed establishment on
2 behalf of the licensee.

3 ~~(3) (a) Except as provided in subsection (3)(b), an employee of a marijuana business shall undergo a~~
4 ~~criminal background check prior to beginning employment.~~

5 ~~(b) An employee of a former medical marijuana licensee in good standing with the department as of~~
6 ~~January 1, 2022, shall undergo a criminal background check within 90 days of January 1, 2022.~~

7 (43) The department may establish procedures for obtaining fingerprints for the fingerprint-based and
8 name-based background checks required under this section."

9
10 **Section 9.** Section 16-12-203, MCA, is amended to read:

11 **"16-12-203. (Effective January 1, 2022) Licensing types -- requirements -- limitations --**

12 **activities.** (1) (a) Subject to subsection (3) and this subsection (1), the department shall issue a license to or
13 renew a license for a person who is applying to be a cultivator, manufacturer, medical marijuana dispensary,
14 adult-use dispensary, or testing laboratory if the person submits to the department:

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

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

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

19 (A) will not divert to any other person the marijuana that the person cultivates or the marijuana
20 products that the person manufactures for consumers or registered cardholders, unless the marijuana or
21 marijuana products are sold to another licensee ~~as part of a sale of a business~~ as allowed under this section
22 and by rules of the department; and

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

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

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

Commented [ES11]: Version 1: Amendment updates a reference to statute (violation under fraudulent representation - now that those statutes are combined)

Also - removes old references to vertical integration from the medical marijuana statutes

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- 1 (A) is a person whose prior financial or other activities or criminal record:
2 (B) poses a threat to the public interest of the state;
3 (C) poses a threat to the effective regulation and control of marijuana and marijuana products; or
4 (D) creates a danger of illegal practices, methods, or activities in the conduct of the licensed
5 business.
- 6 (b) If the person to be licensed consists of more than one individual, the names of all owners must be
7 submitted along with the fingerprints and date of birth of each owner having at least a 5% controlling beneficial
8 ownership interest.
- 9 (c) Nonindividuals who apply for the issuance of a marijuana business license shall disclose to the
10 department the following:
- 11 (i) a complete and accurate organizational chart of the marijuana business disclosing the identity and
12 ownership percentages of its controlling beneficial owners;
- 13 (ii) whether the applicant has ever filed for bankruptcy;
- 14 (iii) whether the applicant has ever been a party to a lawsuit, either as a plaintiff or defendant;
- 15 (iv) any financial interests held by the applicant in another marijuana business in any state;
- 16 (v) if the controlling beneficial owner is a publicly traded corporation, the controlling beneficial owners'
17 managers and any beneficial owners that directly or indirectly beneficially own 5% or more of the owner's
18 interest in the controlling beneficial owner;
- 19 (vi) if the controlling beneficial owner is not a publicly traded corporation, the controlling beneficial
20 owner's managers and any beneficial owners that directly or indirectly beneficially own 5% or more of the
21 owner's interest in the controlling beneficial owner;
- 22 (vii) if the controlling beneficial owner is a natural person, the natural person's identifying information;
- 23 (viii) a person that is both a passive beneficial owner and a financial interest holder in the marijuana
24 business; and
- 25 (ix) any financial interest holder that holds two or more financial interests in the marijuana business or
26 that is contributing over 50% of the operating capital of the marijuana business.
- 27 (d) The department may request that the marijuana business disclose each beneficial owner and
28 affiliate of an applicant or marijuana business or each controlling beneficial owner that is not a publicly traded

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1 corporation.

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

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

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

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

17 (a) has a felony conviction or a conviction for a drug offense, including but not limited to, a conviction
18 for a violation of any marijuana law in any other state within the past 5 years and, after an investigation, the
19 department finds that the applicant has not been sufficiently rehabilitated as to warrant the public trust;

20 (b) is in the custody of or under the supervision of the department of corrections or a youth court;

21 (c) has been convicted of a violation under [16-12-52416-12-302](#) or of making a fraudulent
22 representation under the former medical marijuana program administered by the department of public health
23 and human services;

24 (d) is under 21 years of age;

25 (e) has failed to:

26 (i) pay any taxes, interest, penalties, or judgments due to a government agency;

27 (ii) comply with any provisions of Title 15 or Title 16, including the failure to file any tax return or report;

28 (iii) stay out of default on a government-issued student loan;

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1 (iv) pay child support; or

2 (v) remedy an outstanding delinquency for child support or for taxes or judgments owed to a
3 government agency;

4 (f) has had a license issued under this chapter or a former medical marijuana license revoked within 3
5 years of the date of the application; or

6 (g) has resided in Montana for less than 1 year.

7 (3) Marijuana for use pursuant to this chapter must be cultivated and manufactured in Montana unless
8 federal law otherwise allows for the interstate distribution of marijuana.

9 (4) Except as provided in 16-12-209, a cultivator, manufacturer, medical marijuana dispensary, or
10 adult-use dispensary shall:

11 (a) prior to selling marijuana or marijuana products, submit samples to a testing laboratory pursuant to
12 this chapter and administrative rules;

13 (b) allow the department to collect samples of marijuana or marijuana products during inspections of
14 licensed premises for testing as provided by the department by rule; and

15 (c) participate as required by the department by rule in a seed-to-sale tracking system established by
16 the department pursuant to 16-12-105.

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

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

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

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

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

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

27 (a) may operate adult-use dispensaries;

28 (b) may engage in manufacturing; and

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

2 (7) A cultivator or manufacturer:

3 (a) may contract or otherwise arrange for another party that is licensed to process a cultivator's or

4 manufacturer's marijuana into marijuana products and return the marijuana products to the cultivator or

5 manufacturer for sale; and

6 (b) except as allowed pursuant to 16-12-207, may not open a dispensary before obtaining the

7 required license and before the department has completed the inspection required under this chapter unless

8 permitted to do so pursuant to 16-12-207."

9

10 **Section 10.** Section 16-12-207, MCA, is amended to read:

11 **"16-12-207. (Effective January 1, 2022) Licensing as privilege -- criteria.** (1) A cultivator license,

12 manufacturer license, adult-use dispensary license, medical marijuana dispensary license, combined-use

13 marijuana license, marijuana transporter license, or any other license authorized under this chapter is a

14 privilege that the state may grant to an applicant and is not a right to which an applicant is entitled. In making a

15 licensing decision, the department shall consider:

16 (a) the qualifications of the applicant; and

17 (b) the suitability of the proposed licensed premises, including but not limited to cultivation centers,

18 dispensaries, and manufacturing facilities.

19 (2) The department may deny or revoke a license based on proof that the applicant made a false

20 statement in any part of the original application or renewal application.

21 (3) (a) The department shall deny a cultivator license, manufacturer license, adult-use dispensary

22 license, or medical marijuana license if the applicant's proposed licensed premises:

23 (i) is situated within a zone of a locality where an activity related to the use of marijuana conflicts with

24 an ordinance, a certified copy of which has been filed with the department;

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

26 (iii) is within 500 feet of and on the same street as a building used exclusively as a church, synagogue,

27 or other place of worship or as a school or postsecondary school other than a commercially operated school,

28 unless the locality requires a greater distance. This distance must be measured in a straight line from the center

Commented [ES12]:
Version 1: Amendments in this section address the issue on minimum age to enter a marijuana business.

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1 of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises.

2 This subsection (3)(a)(iii) does not apply if the application is for license renewal and the licensed premises was
3 established before the church, synagogue, or other place of worship or school or postsecondary school existed
4 on the same street.

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

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

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

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

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

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

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

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

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

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

28 (a) allow for the transmission and storage, by digital means, of a video feed that displays the interior

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1 and exterior of the cannabis establishment; and

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

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

5 (12) A person under 21 years of age is not permitted inside a marijuana business unless the person is
6 an employee of the marijuana business or a registered cardholder."

7

8 Section 11. Section 16-12-222, MCA, is amended to read:

9 **"16-12-222. (Effective January 1, 2022) Licensing of marijuana transporters.** (1) (a) A marijuana
10 transporter license may be issued to a person to provide logistics, distribution, delivery, and storage of
11 marijuana and marijuana products. A marijuana transporter license is valid for 2 years. A licensed marijuana
12 transporter is responsible for the marijuana and marijuana products once after it takes control of the marijuana
13 or marijuana product.

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

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

19 (d) The department shall establish by rule the requirements for licensure and the applicable fee for a
20 marijuana transporter license or the renewal of a transporter license. The department may not license a person
21 to be a marijuana transporter if the applicant meets any of the criteria established for denial of a license under
22 16-12-203(2).

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

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

27 (4) A person who obtains a cultivator license, manufacturer license, adult-use dispensary license,
28 medical marijuana dispensary license, or testing laboratory license or is an employee of one of those licensees,

Commented [ES13]:
Version 1: Amendments in this section remove
outdated dates.

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1 may:

2 (a) transport marijuana or marijuana products between other licensed premises without a transporter

3 license so long as the transportation:

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

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

6 (b) deliver marijuana from a dispensary to a registered cardholder provided that the person delivering

7 the marijuana or marijuana products:

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

9 (ii) includes a printed delivery manifest from a dispensary to a registered cardholder containing the

10 registered cardholder's address and cardholder number and the dispensary's address and license number.

11 (5) (a) A marijuana transporter licensee may maintain a licensed premises to temporarily store

12 marijuana and marijuana products and to use as a centralized distribution point in a jurisdiction where the local

13 government approval provisions contained in 16-12-301 have been satisfied or in a county in which the majority

14 of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

15 (b) The licensed premises must be located in a jurisdiction that permits the operation of a marijuana

16 business and comply with rules adopted by the department.

17 (c) A marijuana transporter may store and distribute marijuana and marijuana products from this

18 location. A storage facility must meet the same security requirements that are required to obtain a license under

19 this chapter.

20 (6) A marijuana transporter shall use the seed-to-sale tracking system developed pursuant to 16-12-

21 105 to create shipping manifests documenting the transport of retail marijuana and retail marijuana products

22 throughout the state.

23 (7) A marijuana transporter may deliver marijuana or marijuana products to licensed premises or

24 registered cardholders only and may not make deliveries of marijuana or marijuana products to individual

25 consumers.

26 (8) A person delivering marijuana or marijuana products for a marijuana transporter must possess a

27 valid marijuana worker permit provided for under 16-12-226 and be a current employee of the marijuana

28 transporter licensee."

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2 **Section 12.** Section 16-12-223, MCA, is amended to read:

3 **"16-12-223. (Effective January 1, 2022) Licensing of cultivators.** (1) (a) The department shall
4 license cultivators according to a tiered canopy system. Except as provided in subsection (6), all cultivation that
5 is licensed under this chapter may only occur at an indoor cultivation facility.

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

8 (i) A micro tier canopy license allows for a canopy of up to 250 square feet at one indoor cultivation
9 facility.

10 (ii) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one indoor cultivation
11 facility.

12 (iii) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two indoor cultivation
13 facilities.

14 (iv) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three indoor
15 cultivation facilities.

16 (v) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four indoor
17 cultivation facilities.

18 (vi) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five indoor
19 cultivation facilities.

20 (vii) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five indoor
21 cultivation facilities.

22 (viii) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five indoor
23 cultivation facilities.

24 (ix) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five indoor
25 cultivation facilities.

26 (x) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six indoor
27 cultivation facilities.

28 (xi) A tier 10 canopy license allows for a canopy of up to 30,000 square feet at up to seven indoor

Commented [E514]: Version 2 - From 6/22 memo: Tier increase

Amendment clarifies the intent was always to be able to tier up at any time

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1 cultivation facilities.

2 (xii) A tier 11 canopy license allows for a canopy of up to 40,000 square feet at up to eight indoor
3 cultivation facilities.

4 (xiii) A tier 12 canopy license allows for a canopy of up to 50,000 square feet at up to nine indoor
5 cultivation facilities.

6 (c) A cultivator shall demonstrate that the local government approval provisions in 16-12-301 have
7 been satisfied for the jurisdiction where each proposed indoor cultivation facility or facilities is or will be located
8 if a proposed facility would be located in a county in which the majority of voters voted against approval of
9 Initiative Measure No. 190 in the November 3, 2020, general election.

10 (d) When evaluating an initial or renewal license application, the department shall evaluate each
11 proposed indoor cultivation facility for compliance with the provisions of 16-12-207 and 16-12-210.

12 (e) (i) Except as provided in subsection (1)(e)(iii), a cultivator who has reached capacity under the
13 existing license may apply to advance to the next licensing tier in conjunction with a regular renewal application
14 by demonstrating that:

15 (A) the cultivator is using the full amount of canopy currently authorized;

16 (B) the tracking system shows the cultivator is selling at least 80% of the marijuana produced by the
17 square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can otherwise
18 demonstrate to the department that there is a market for the marijuana it seeks to produce; and

19 (C) its proposed additional or expanded indoor cultivation facility or facilities are located in a
20 jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied or that
21 they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the
22 November 3, 2020, general election.

23 (ii) Except as provided in subsection (1)(e)(iii), the department may increase a licensure level by only
24 one tier at a time.

25 (iii) Between January 1, 2022, and June 30, 2023, a cultivator may at any time increase its licensure
26 level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of
27 subsections (1)(e)(i)(A) and (1)(e)(i)(B).

28 (iv) The department shall conduct an inspection of the cultivator's registered premises and proposed

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1 premises within 30 days of receiving the application and before approving the application.

2 (f) A marijuana business that has not been issued a license before July 1, 2023, must be initially
3 licensed at a tier 2 canopy license or lower.

4 (2) The department is authorized to create additional tiers as necessary.

5 (3) The department may adopt rules:

6 (a) for inspection of proposed indoor cultivation facilities under subsection (1);

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

8 (c) in consultation with the department of agriculture and based on well-supported science, to require
9 licensees to adopt practices consistent with the prevention, introduction, and spread of insects, diseases, and
10 other plant pests into Montana.

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

12 (a) \$1,000 for a cultivator with a micro tier canopy license;

13 (b) \$2,500 for a cultivator with a tier 1 canopy license;

14 (c) \$5,000 for a cultivator with a tier 2 canopy license;

15 (d) \$7,500 for a cultivator with a tier 3 canopy license;

16 (e) \$10,000 for a cultivator with a tier 4 canopy license;

17 (f) \$13,000 for a cultivator with a tier 5 canopy license;

18 (g) \$15,000 for a cultivator with a tier 6 canopy license;

19 (h) \$17,500 for a cultivator with a tier 7 canopy license;

20 (i) \$20,000 for a cultivator with a tier 8 canopy license;

21 (j) \$23,000 for a cultivator with a tier 9 canopy license;

22 (k) \$27,000 for a cultivator with a tier 10 canopy license;

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

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

25 (5) The fee required under this part may be imposed based only on the tier of licensure and may not
26 be applied separately to each indoor cultivation facility used for cultivation under the licensure level.

27 (6) A former medical marijuana licensee who engaged in outdoor cultivation before November 3,
28 2020, may continue to engage in outdoor cultivation."

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Section 13. Section 16-12-225, MCA, is amended to read:

"16-12-225. (Effective January 1, 2022) Combined-use marijuana licensing -- requirements. (1)

The department may issue a total of eight combined-use marijuana licenses to entities that are:

- (a) a federally recognized tribe located in the state; or
- (b) a business entity that is majority-owned by a federally recognized tribe located in the state.
- (2) A combined-use marijuana license consists of one ~~tier 1~~ canopy license and one dispensary

license allowing for the operation of a dispensary. ~~Cultivation and dispensary facilities must be located at the same licensed premises.~~

(3) A combined-use marijuana licensee shall operate its cultivation and dispensary facilities on land that is located:

- ~~(a) within 150 air miles of the exterior boundary of the associated tribal reservation or, for the Little Shell-Chippewa tribe only, within 150 air miles of the tribal service area; and~~
- ~~(b) in a county that has satisfied the local government approval provisions in 16-12-301 if the majority of voters in the county voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.~~

(4) An applicant under this section must satisfy all licensing requirements under this chapter and is subject to all fees and taxes associated with the cultivation and sale of marijuana or marijuana products provided for in this chapter.

(5) A license granted under this section must be operated in compliance with all requirements imposed under this chapter.

(6) After a tribe or a majority-owned business of that tribe is licensed under this section, that tribe or another majority-owned business of that tribe may not obtain another combined-use license until the prior license is relinquished, lapses, or is revoked by the department."

Section 14. Section 16-12-226, MCA, is amended to read:

"16-12-226. (Effective January 1, 2022) Marijuana worker permit -- requirements. (1) A marijuana worker permit is required for an employee who performs work for or on behalf of a marijuana business if the

Commented [ES15]: Version 2 - From 6/22 memo: Combined-use
Amendments remove the words 'tier 1' - to remove all doubt, and remove the distance and co-location requirements

Commented [ES16]:
Version 1: Amendments remove reference to outdated date.
Version 2 - From 6/22 memo: Background checks
Amendments shift the burden of reporting employee convictions of felonies or violations from the department to the employer

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1 individual participates in any aspect of the marijuana business.

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

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

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

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

9 (i) name;

10 (ii) mailing address;

11 (iii) date of birth;

12 (iv) signature; and

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

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

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

19 (d) a fee established by the department.

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

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

24 (5) The department shall deny an initial or renewal application if the applicant:

25 (a) is not 18 years of age or older;

26 (b) has had a marijuana license or worker permit revoked for a violation of this chapter or any rule
27 adopted under this chapter within 2 years of the date of the application;

28 (c) has violated any provision of this chapter; or

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- 1 (d) makes a false statement to the department.
- 2 (6) An employee of a licensee shall carry the employee's worker permit at all times when performing
- 3 work on behalf of a marijuana business.

4 (7) A person who holds a marijuana worker permit must notify the ~~department~~person's employer in
5 writing within 10 days of:

- 6 (a) a conviction for a felony;
- 7 (b) the issuance of any citation for violating a marijuana law imposed under this chapter or the
- 8 marijuana laws of any other state; or
- 9 (c) the issuance of any citation for selling or dispensing alcohol or tobacco products to a minor."

11 **Section 15.** Section 16-12-302, MCA, is amended to read:

12 "**16-12-302. (Effective January 1, 2022) Fraudulent representation -- penalties.** (1) In addition to
13 any other penalties provided by law, an individual who fraudulently represents to a law enforcement official that
14 the individual is:

- 15 (a) a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, testing laboratory,
- 16 or marijuana transporter or has a marijuana worker permit is guilty of a civil fine not to exceed \$1,000; or
- 17 (b) a registered cardholder is guilty of a misdemeanor punishable by imprisonment in a county jail for
- 18 a term not to exceed 1 year or a fine not to exceed \$1,000, or both.

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

20 (3) A physician who purposely and knowingly misrepresents any information required under 16-12-
21 509 is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a
22 fine not to exceed \$1,000, or both."

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

25 "**16-12-310. (Effective January 1, 2022) Limit on local-option marijuana excise tax rate -- goods**
26 **subject to tax.** (1) The rate of the local-option marijuana excise tax must be established by the election petition
27 or resolution provided for in 16-12-311, and the rate may not exceed 3%.

28 (2) The local-option marijuana excise tax is a tax on the retail value of all marijuana and marijuana

Commented [ES17]:
Version 1: This section incorporates 16-12-524 into 16-12-302. All the wording in both statutes remain.

Commented [ES18]: Version 2 - From 6/22 memo: Local-Option analysis
Amendments allow for full distribution of municipal tax revenue

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- 1 products sold at an adult-use dispensary or medical marijuana dispensary within a county.
- 2 (3) If a county imposes a local-option marijuana excise tax:
- 3 (a) 50% of the resulting tax revenue must be retained by the county;
- 4 (b) 45% of the resulting tax revenue must be apportioned to the municipalities on the basis of the ratio
- 5 of the population of ~~the each~~ city or town to the ~~total~~-county population ~~of municipalities within the county~~; and
- 6 (c) the remaining 5% of the resulting tax revenue must be retained by the department to defray costs
- 7 associated with administering 16-12-309 through 16-12-312 and 16-12-317. The funds retained by the
- 8 department under this subsection (3)(c) must be deposited into the marijuana state special revenue account
- 9 established under 16-12-111.
- 10 (4) For the purposes of this section, "tax revenue" means the combined taxes collected under any
- 11 local-option marijuana excise tax collected on retail sales within the county."

12

13 **Section 17.** Section 16-12-311, MCA, is amended to read:

14 **"16-12-311. (Effective January 1, 2022) Local government excise tax-- election required --**

15 **procedure -- notice.** (1) A county that has permitted an adult-use dispensary or medical marijuana dispensary

16 to operate within its borders pursuant to 16-12-301 or a county in which the majority of voters voted to approve

17 Initiative Measure No. 190 in the November 3, 2020, general election, may not impose or, except as provided in

18 this section, amend or repeal a local-option marijuana excise tax unless the local-option marijuana excise tax

19 question has been approved by a majority of the qualified electors voting on the question.

20 (2) The local-option marijuana excise tax question may be presented to the qualified electors of a

21 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

22 resolution of the governing body of the county.

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

- 24 (a) the rate of the tax, which may not exceed 3% of the retail value of all marijuana and marijuana
- 25 products sold at an adult-use dispensary or medical marijuana dispensary;
- 26 (b) the date when the tax becomes effective, which may not be earlier than 90 days after the election;
- 27 and
- 28 (c) the purposes that may be funded by the tax revenue.

Commented [ES19]: Version 2 - From 6/22 memo:
Local -option analysis

Amendments to this section remove conflicting notice requirements with 13-1-108.

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As of: 2022/04/29 10:33:08

Drafter: Erin Sullivan, 406-444-3594

67th Legislature

PD 0001

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

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

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

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

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

13
14 ~~NEW SECTION. Section 18, Section 19. (standard) Repealer.~~ The following sections of the Montana
15 Code Annotated are repealed:

16 16-12-524. (Effective January 1, 2022) Fraudulent representation -- penalties.

17 16-12-532. (Effective January 1, 2022) Legislative monitoring.

18
19 ~~NEW SECTION. Section 19, Section 20.~~ **Effective dates.** (1) [Sections [12 through 13] and this
20 section are effective upon passage and approval.

21

22

- END -

Commented [ES20]:
These statutes are repealed as they have been incorporated into the general sections for fraudulent representation -- penalties & legislative monitoring

Commented [ES21]: This allows for the amendments to 16-12-223 (tiering up for cultivators) and 16-12-225 (combined-use) to take effect before the end of the moratorium.