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Economic Affairs Interim Committee

67th Montana Legislature

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FONG HOM, Secretary

November 10, 2021

TO: Economic Affairs Interim Committee
FROM: Jameson Walker, Staff Attorney
RE: Administrative Rulemaking and Rule Review, November 2021

The Economic Affairs Interim Committee (Committee) is required to review administrative rules promulgated by the Department of Agriculture, Department of Commerce, Department of Labor and Industry, Department of Livestock, State Auditor's Office, Division of Banking & Financial Institutions, Governor's Office of Economic Development, and Department of Revenue, Liquor Control Division and Cannabis Control Division, for compliance with the Montana Administrative Procedure Act (MAPA). The following notices are filed with the Secretary of State's Office for publication in the Montana Administrative Register (MAR). Notices are available at <http://www.mtrules.org> (search by notice number).

PROPOSAL NOTICES

Department of Agriculture and administratively attached entities

There are no pending rules.

Department of Commerce and administratively attached entities

MAR Notice Number: 8-94-191

Subject: Amendment of rules pertaining to the administration of the Montana Historic Preservation Grant Program.

Summary: The department proposes to amend 8.94.3101 and 8.94.3102. The department states that the amendments are reasonably necessary to implement House Bill 12 (2021).

Notes/Hearing: The department will hold a public hearing on November 15, 2021, to consider the notice.

Department of Labor and Industry and administratively attached entities

MAR Notice Number: 24-174-76

Subject: Amendment and adoption of rules pertaining to the Board of Pharmacy.

Summary: The board proposes to amend 24.174.401 by establishing registration fees for drugs dispensed by a medical practitioner. The board states that the rule is reasonably necessary to implement Senate Bill 374 (2021). This bill allows medical practitioners to dispense drugs when

registered to dispense by the board. The board also proposes to adopt New Rule I (qualifications for dispenser registration), New Rule II (dispensing requirements), and New Rule III (dispenser recordkeeping requirements). These new rules will implement Senate Bill 374.

Notes/Hearing: The department held a hearing on October 15, 2021, to consider the notice.

MAR Notice Number: 24-201-54

Subject: Amendment and repeal of rules pertaining to the Board of Public Accountants.

Summary: The board proposes to amend 24.201.101 (board organization), 24.201.301 (definitions), 24.201.505 (firms – registration), and 24.201.532 (nonroutine applications). Generally, the board made a comprehensive review of its rules and determined that several outdated references should be removed or updated. Additionally, the board is seeking to standardize processes relating the operation of boards. The board proposes to repeal 24.201.401 (board meetings), 24.201.405 (committees), 24.201.524 (cheating), 24.201.1101 (introduction), and 24.201.2101 (renewals). The board states that in updating its rules, it determined that these were not necessary.

Notes/Hearing: The department held a hearing on October 15, 2021, to consider the notice.

MAR Notice Number: 24-219-36

Subject: Amendment and repeal of rules pertaining to the Board of Behavioral Health.

Summary: The board proposes to amend 24.219.301 (definitions), 24.219.501, 24.219.505, 24.219.512, 24.219.601, 24.219.605, 24.219.612, 24.219.712, 24.219.5006, 24.219.5007, and 24.219.5013 (license requirements for licensed clinical social workers, licensed master's social workers, licensed baccalaureate social workers, licensed clinical professional counselors, licensed marriage and family therapists, and licensed addiction counselors), and 24.219.5020 (examination). Generally, the amendments seek to implement Senate Bill 102 (2021). This bill amended the definition of "licensed addiction counselor" to utilize the term "gambling disorder." The board states that "gambling dependence impulse control disorder" is no longer a recognized clinical term and some of the amendments reflect this. The board states that Senate Bill 102 also removed the statutory requirement that candidate applicants submit reference letters. The board also seeks to further facilitate the current standardized department application and renewal procedures. The board proposes to repeal 24.219.606 (professional counselor licensure candidate requirements) and 24.219.2101 (continuing education requirements). The board states that the rules are unnecessary as many of the provisions were moved to another rule in 2019.

Notes/Hearing: The department held a hearing on October 20, 2021, to consider the notice.

MAR Notice Number: 24-17-380

Subject: Amendment of rules pertaining to prevailing wage rates for public works projects.

Summary: The department proposes to amend 24.17.103 and 24.17.127. The amendment proposes to add Miles City and Sidney as dispatch cities and to update references to 2022 publications. The department states that the rule amendments are necessary to implement House Bill 201 (2021). The department believes that the amendments may directly affect small businesses by requiring employers to pay higher wages as a result of the prevailing wage rates.

Notes/Hearing: The department will hold a hearing on November 12, 2021, to consider the notice.

MAR Notice Number: 24-177-36

Subject: Amendment of rules pertaining to the Board of Physical Therapy Examiners.

Summary: The board proposes to amend 24.177.501 (examinations) and 24.177.2301 (unprofessional conduct). The proposed amendments are to implement Senate Bill 70 (2021), which removed the oral interview requirement for physical therapist licensure and allowed applicants to take the licensure examination prior to graduation. Additionally, the proposed amendments are to implement the department's standardized procedures for renewals, continuing education audits, and administrative suspension.

Notes/Hearing: The board held a hearing on November 2, 2021, to consider the notice.

MAR Notice Number: 24-13-386

Subject: Amendment and repeal of rules pertaining to the Montana HELP Act workforce development services.

Summary: The department proposes to amend 24.13.101 and 24.13.105. Generally, the rule amendments implement changes made by House Bill 614 (2021), which allowed for greater flexibility in the scope of the workforce development services offered to program participants and employers. Specifically, House Bill 614 required the department to contract with private nonprofit or for-profit entities to provide workforce development services, including education, training, and supportive services. The department proposes to repeal 24.13.109 because it no longer applies to the HELP Act program under House Bill 614.

Notes/Hearing: The department will hold a hearing on November 30, 2021, to consider the notice.

MAR Notice Number: 24-21-385

Subject: Amendment and repeal of rules pertaining to apprenticeship ratios.

Summary: The department proposes to amend 24.21.1003. Generally, the department is amending the rule to allow for more individuals to enter registered apprenticeship programs while acknowledging that Montana currently has a lack of journey workers across many occupations. The department is charged with establishing the ration pursuant to 39-6-106, MCA. The department proposes to repeal 24.21.415, which is based on the rule amendments relating to the ratio.

Notes/Hearing: The department will hold a hearing on December 8, 2021, to consider the notice.

MAR Notice Number: 24-101-311

Subject: Amendment and adoption of rules pertaining to the Board of Behavioral Health, Board of Medical Examiners, Board of Nursing, and Board of Psychologists.

Summary: The boards propose to adopt New Rules I and II, pertaining to requirements for sexual offender evaluation endorsements. The boards state that the proposed notice implements Senate Bill 39 (2021), which created a sexual offender treatment evaluator endorsement in order to maintain standards, consistent with appropriate national standards. New Rule I provides definitions. New Rule II provides requirements for the sexual offender evaluator license endorsement. The Board of Behavioral Health proposes to amend 24.219.2301 to add the sexual offender evaluation.

Notes/Hearing: The department will hold a hearing on December 2, 2021, to consider the notice.

MAR Notice Number: 24-138-81

Subject: Amendment of rules pertaining to the Board of Dentistry.

Summary: The board proposes to amend 24.138.402 (fee schedule), 24.138.504 (approved clinical exam criteria for dentists and dental hygienists), and 24.138.508 (dental hygiene local anesthetic agent certification). The board is proposing to reduce various fees after discovering that the board's cash balance is nearing two times its appropriation. Additionally, the board is proposing to extend the approved clinical exam criteria for the years 2021 and 2022. Finally, the board is amending its rules relating to acceptance of dental hygienist applicants who wish to transfer their prior out-of-state endorsements for local anesthesia when seeking Montana licensure.

Notes/Hearing: The department will hold a hearing on November 30, 2021, to consider the notice.

MAR Notice Number: 24-148-1

Subject: Amendment and adoption of rules pertaining to the licensure of genetic counselors.

Summary: The department proposes to amend 24.101.413 and adopt New Rule I (fee schedule), New Rule II (continuing education requirements), and New Rule III (unprofessional conduct). Generally, the rule notice seeks to implement House Bill 217 (2021), which required licensure of genetic counselors and established genetic counselor licensure and scope of practice requirements.

Notes/Hearing: The department will hold a hearing on December 1, 2021, to consider the notice.

MAR Notice Number: 24-156-92

Subject: Amendment, adoption, and repeal of rules pertaining to the Board of Medical Examiners.

Summary: The board proposes to amend 24.156.2701 (definitions), 24.156.2711 (emergency care provider licensure qualifications), 24.156.2713 (emergency care provider license application), 24.156.2718 (continued competency requirements). The board proposes to adopt New Rule I (fee schedule). The board proposes to repeal 24.156.601, 24.156.631, 24.156.1002, 24.156.1302, 24.156.1402, 24.156.1618, and 24.156.2731 (relating to fees) and 24.156.2721 (final pre-licensing examinations). The board states that the rule notice is necessary to amend several rules to eliminate the board's alternative written examination as a pathway to emergency care provider licensure and align examination and continued competency standards with the National Registry of Emergency Medical Technicians requirements. The board is additionally proposing a broad fee reduction and a fee schedule reorganization.

Notes/Hearing: The department will hold a hearing on December 1, 2021, to consider the notice.

Department of Revenue, Liquor Control Division and Cannabis Control Division

MAR Notice Number: 42-1033

Subject: Adoption and amendment of rules pertaining to implementation of the Montana Marijuana Regulation and Taxation Act.

Summary: The department proposes to adopt New Rules I through XV and to amend 42.39.102:

NEW RULE I LICENSE, APPLICATION, AND RENEWAL FEES
NEW RULE II MARIJUANA MANUFACTURER LICENSES
NEW RULE III MARIJUANA CULTIVATOR LICENSES
NEW RULE IV MARIJUANA DISPENSARY LICENSES

NEW RULE V MARIJUANA TRANSPORTER LICENSES
NEW RULE VI COMBINED USE LICENSES
NEW RULE VII MARIJUANA TESTING LABORATORY LICENSES
NEW RULE VIII MARIJUANA STORAGE FACILITY ENDORSEMENT
NEW RULE IX WORKER PERMITS
NEW RULE X GENERAL LABELING REQUIREMENTS
NEW RULE XI LABELING REQUIREMENTS FOR MARIJUANA FLOWER
NEW RULE XII LABELING OF INGESTIBLE MARIJUANA-INFUSED PRODUCTS
NEW RULE XIII LABELING OF NON-INGESTIBLE MARIJUANA-INFUSED PRODUCTS
NEW RULE XIV LABELING REQUIREMENTS FOR MARIJUANA CONCENTRATES AND EXTRACTS
NEW RULE XV PACKAGING REQUIREMENTS

The department states that the rule notice is to implement House Bill 701 (2021). Generally, the department proposes to adopt New Rules I through XV and to amend 42.39.102 to:

(a) adopt or amend definitions for new terminology established in, or as an extension of, the Montana Marijuana Regulation and Taxation Act;

(b) provide department systems, forms, uniform application processes, and fee schedules through which marijuana businesses may apply to the department for licensure, including applicable endorsements, in the areas of manufacturing, cultivating, dispensing, or transporting marijuana;

(c) provide department systems, forms, uniform application processes, and fee schedules for the limited cultivation and sale of medical marijuana to individuals with debilitating medical conditions (registered cardholders) under the medical marijuana program; and

(d) reorganize and incorporate existing medical marijuana program rule provisions, many of which have been in force since 2018, from ARM Title 42, chapter 39, into these proposed rules for administrative consistency between the medical marijuana program and the adult-use program.

Notes/Hearing: The department will conduct a public hearing on November 16, 2021, to consider the notice.

MAR Notice Number: 42-1040

Subject: Adoption of rules pertaining to the implementation of compliance and enforcement requirements of the Montana Marijuana Regulation and Taxation Act and local-option marijuana excise taxation.

Summary: The department proposes to adopt New Rules I through XIII:

NEW RULE I MARIJUANA DISPENSARY - POINT-OF-SALE SYSTEM REQUIRED
NEW RULE II LICENSED PREMISES – MANDATORY SIGNAGE
NEW RULE III LICENSED PREMISES – SECURITY REQUIREMENTS
NEW RULE IV VIOLATIONS, PROCEDURES, AGGRAVATING AND MITIGATING CIRCUMSTANCES
NEW RULE V SUSPENSION AND REVOCATION OF A LICENSE
NEW RULE VI SERVICE OF NOTICES
NEW RULE VII SUSPENSION OR REVOCATION OF WORKER PERMITS
NEW RULE VIII CIVIL PENALTIES
NEW RULE IX NOTICE POSTING PROCEDURE UPON REVOCATION OR SUSPENSION OF LICENSE
NEW RULE X INSPECTIONS
NEW RULE XI DEFICIENCY REPORTS

NEW RULE XII GENERAL LICENSEE REQUIREMENTS

NEW RULE XIII LOCAL-OPTION MARIJUANA EXCISE TAX; NOTIFICATION REQUIREMENTS OF A LOCALITY; AFFECTED DISPENSARY REPORTING AND TAX PAYMENT REQUIREMENTS

The department states that the rule notice is to implement House Bill 701 (2021). Generally, the department states that the rule notice proposes New Rules I through XII to implement necessary compliance and enforcement portions of House Bill 701, including providing a uniform system for license and licensed premises compliance and enforcement within the authority of the department.

Notes/Hearing: The department will hold a hearing on November 30, 2021, to consider the notice.

MAR Notice Number: 42-1042

Subject: Amendment and repeal of rules pertaining to the medical marijuana program and implementation of the Marijuana Regulation and Taxation Act.

Summary: The department proposes to amend 42.39.106, 42.39.107, 42.39.117, 42.39.118, 42.39.202, 42.39.203, 42.39.310, 42.39.311, and 42.39.312. The department proposes to repeal 42.39.103, 42.39.108, 42.39.111, 42.39.113, 42.39.114, 42.39.119, 42.39.201, 42.39.301, 42.39.302, 42.39.305, 42.39.306, and 42.39.313. Generally, the department states that the proposed rule amendments implement House Bill 701 (2021) and seek to remove redundant or superfluous provisions from what is found in the Montana Marijuana Regulation and Taxation Act or the department's other rules, including those rules pending adoption in the department's concurrent rulemaking under MAR Notice Nos. 42-1033 and 42-1040. The department also proposes to amend rule sections for brevity and content organization and to improve the general readability of the rules.

Notes/Hearing: The department will hold a hearing on November 30, 2021, to consider the notice.

Department of Livestock and administratively attached entities

MAR Notice Number: 32-21-318

Subject: Amendment of rules pertaining to livestock brands enforcement division fees and freeze branding.

Summary: The department proposes to amend 32.2.404 to add a \$10 fee for cattle freeze brands in addition to the hot iron brand. The department states that the fee is reasonably necessary to be commensurate with the costs and it will minimally affect the 200 freeze brands on record. The department also proposes to amend 32.18.109 (freeze branding) to make the rule consistent with statutory terminology.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

MAR Notice Number: 32-21-319

Subject: Amendment of rules pertaining to fluid milk and Grade A milk products.

Summary: The department proposes to amend 32.8.101 to update references and to specify that the rules of the administrative chapter do not apply to "small dairies." The department states that the rule changes are to implement Senate Bill 199 (2021), which added a definition of "small dairies".

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

MAR Notice Number: 32-21-320

Subject: Amendment of rules pertaining to time from processing that fluid milk may be sold for public consumption.

Summary: The department proposes to amend 32.8.202 to generally allow coffee kiosks and restaurants to use and serve milk beyond 12 days after pasteurization. The department states that the rule will align with the distinction between the "sell-by date" and the "use-by date" and permit businesses to use and serve milk to customers beyond the sell-by date on the package. The department states that the amendment will not change the department's intention that milk sold as packaged will not be sold to the public beyond 12 days after pasteurization.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

MAR Notice Number: 32-21-321

Subject: Amendment of rules pertaining to scope of rules.

Summary: The department proposes to amend 32.8.201 (scope of rules) to provide that the rules do not apply to "small dairies". The proposed rule change is to implement Senate Bill 199 (2021).

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

MAR Notice Number: 32-21-322

Subject: Amendment of rules pertaining to diagnostic laboratory fees.

Summary: The department proposes to amend 32.82.403 to add two new tests. The two tests are the small animal pregnancy test and the parainfluenza virus type 3 serum neutralization test.

Notes/Hearing: The department does not contemplate the need to conduct a public hearing.

State Auditor's Office

MAR Notice Number: 6-265

Subject: Adoption of rules pertaining to pharmacy benefit managers.

Summary: The state auditor proposes to adopt New Rule I (definitions) and New Rule II (network adequacy). The state auditor states that the new rules will implement Senate Bill 395 (2021) and will ensure adequate and sufficient access to pharmacies and pharmacist services and to provide transparency for consumers to make fully informed decisions.

Notes/Hearing: The state auditor will hold a public hearing on November 12, 2021, to consider the notice.

Division of Banking & Financial Institutions

There are no pending rules.

Governor's Office of Economic Development

There are no pending rules.