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Montana Legislative Services Division

Legal Services Office

TO: Erin Sullivan and Jameson Walker
FROM: Cori Hach, Legal Services Office
RE: Issues in HB 701 for Potential Inclusion in a Housekeeping Committee Bill

In November of 2020, Montana voters passed CI-118 and I-190, which legalized the possession, use, cultivation, and sale of limited amounts of marijuana for adults over the age of 21.¹ The 2021 Legislature passed HB 701, which made significant amendments to the regulatory and taxation framework established by the initiative.² The Department of Revenue and (to a limited extent with respect to testing laboratories) the Department of Public Health and Human Services are currently in the process of promulgating rules to administer HB 701, and the bill is now codified in the Montana Code Annotated.

As the dust has settled from the 2021 session, a number of oversights and inconsistencies within HB 701 have emerged that were not caught prior to the bill's passage. Many of the initially discovered issues relate to effective dates,³ and because all provisions of HB 701 will be effective by the beginning of the next legislative session, there is no need to fix these issues in a housekeeping bill. This memo describes some issues that the Economic Affairs Interim Committee may wish to address through a housekeeping committee bill in order to ensure that the Montana Marijuana Regulation and Taxation Act clearly effectuates legislative intent.

Minimum Age to Enter a Marijuana Business:

Issue:

HB 701 requires employees of marijuana business to be 18 years of age or older.⁴ An initial draft of the bill had set this age minimum at 21 years of age, however the age requirement was lowered to 18 in the introduced version of the bill in order to avoid a

¹ Initiative Measure No. 190, passed November 3, 2020.

² Chapter 576, Laws of 2021.

³ HB 701 contains several provisions that were enacted with an effective date of January 1, 2022 when it would have been clearer or more consistent with legislative intent for the effective date to be immediate or July 1, 2021. For example, as you are aware, Section 22 of HB 701, which provides the Economic Affairs Interim Committee with jurisdiction over marijuana-related matters, technically becomes effective on January 1, 2022, resulting in the Memorandum of Understanding entered with the Revenue Interim Committee.

⁴ Sec. 7, Ch. 576, L. 2021; Sec 43, Ch. 576, L. 2021.

potential constitutional conformity issue.⁵ However, a potentially conflicting provision was also passed in Section 54 of HB 701, amending 16-12-207, MCA. New subsection (12) of this section provides that “[a] person under 21 years of age is not permitted inside a marijuana business unless the person is a registered cardholder.”

Suggested Fix:

The inconsistency described above could be alleviated by amending subsection (12) of 16-12-207, MCA to read:

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

Lack of "Catch-all" Penalty Provision:

Issue:

Subsections (2) through (5) of 16-12-106, MCA, enumerate penalties for specific types of unlawful conduct, including cultivation of marijuana in an unsecured location, smoking of marijuana in public, underage possession and use of marijuana and marijuana paraphernalia, and distribution of marijuana to underage persons. However, the section does not include a general catch-all penalty. This means that for certain conduct that is not permitted under the Marijuana Regulation and Taxation Act but not specifically addressed in 16-12-106, MCA, the Act does not contain a penalty provision. An example is possession or consumption of marijuana in any of the places listed in 12-16-108(1)(g), MCA, such as public transportation or a motel or hotel room.

Suggested Fix:

It may be beneficial to add a catch-all penalty provision in 12-16-106, MCA, along the lines of:

"If no other penalty is specified under this chapter, violation this chapter is punishable by a fine not to exceed \$___ or by imprisonment in a county jail for a term not to exceed ____, or both, unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of Title 45."⁶

⁵ Article II, section 14 of the Montana Constitution provides that "[a] person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish the legal age for purchasing, consuming, or possessing alcoholic beverages and marijuana." (emphasis added). Employment at a marijuana business is not listed as one of the activities that the legislature is constitutionally permitted to establish the legal age for.

⁶ This example language is adapted from soon-to-be repealed 50-46-330(7) and is certainly ripe for improvement.

Repeal of Title 61, Chapter 8, Part 4:

Issue:

Sections 88 through 91 of HB 701 all amend sections within Title 61, chapter 8, part 4, effective January 1, 2022. The amendments were primarily to add oral fluid drug screening to various listings of appropriate and admissible testing for the presence and concentration of drugs and alcohol.

However, another 2021 bill, SB 365⁷, repealed Title 61, chapter 8, part 4 in its entirety as part of a general revision and reorganization of Montana's DUI laws. A section repeal "trumps" an amendment to the same section, so the amendments in Section 88 through 91 of HB 701 will never go into effect (the repeal in SB 365 is also effective January 1, 2022).

Suggested Fix:

Most of Title 61, chapter 8, part 4 has now been recodified in its reorganized and revised form in the newly created Title 61, chapter 8, part 10. It may be beneficial to consult with the Department of Justice on where equivalent amendments should be made in the new part to ensure that law enforcement can legally and effectively screen for the presence of cannabis. I have notified the staff of the Law and Justice Interim Committee and the relevant staff at the Department of Justice of this issue. It may make more sense to address this issue separately from other HB 701 housekeeping issues, either in a committee bill from the Law and Justice Interim Committee or an agency bill from the Department of Justice, but I do not believe any draft legislation has been initiated.

⁷ Chapter 498, Laws of 2021.

