

Statute(s)	Title	Issue	Explanation	Suggested Fix
15-64-101 16-12-102	Definitions Definitions	Inconsistency in definitions	The Marijuana Regulation and Taxation Act provides a definition in 16-12-102 for a "consumer" as: a person who obtains . . . marijuana from a licensed dispensary but not for resale. In other words, a consumer purchases marijuana.  Title 15, chapter 64 governs the taxation of drugs, and provides a definition in 15-64-101 for a "purchaser" as: a person to whom a sale of marijuana or a marijuana product is made	Review statutes and revise definitions to remove inconsistencies in definitions
16-12-102(20) 16-12-208 16-12-224	Definitions Restrictions Licensing of Dispensaries	Definition of Hemp	Questions were raised during the rulemaking process regarding the interpretation of the definition of hemp, and whether the legislature intended cannabidiol (CBD) products to be excluded from sales at dispensaries	Review the definition of hemp in 16-12-102(20) for clarity. Alternatively, review 16-12-208 (Restrictions) and 16-12-224 (Licensing of Dispensaries) to add permissive language for dispensaries to sell CBD.
16-12-106	Personal use and cultivation of marijuana - penalties	Lack of "Catch-all" Penalty Provision	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 Act but not specifically addressed in 16-12-106, the Act does not contain a penalty provision. An example is possession or consumption in any of the places listed in 16-12-108(1)(g), such as public transportation or a motel or hotel room.	It may be beneficial to add a catch-all penalty provision in 16-12-106, MCA along the lines of:  <u>"If no other penalty is specified under this chapter, violation of 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."</u>
16-12-108 16-12-109	Limitations of Act Unlawful conduct by licensees - penalties	Delivery, distribution, purchase, consumption, use under 21	In 16-12-108, MCA, subsection (1)(d) limits delivery or distribution and subsection (1)(e) limits purchase, consumption, or use of marijuana and marijuana products to persons aged 21 or over. There is no consideration in these subsections for registered cardholders.	Review subsections for clarity. Consider adding language such as:  "unless the person is a registered cardholder"
16-12-109 16-12-210	Unlawful conduct by licensees -- penalties Inspections -- procedures -- prohibition on inspector affiliation with licensees	Conflicting language	There are conflicting provisions regarding the length of time that the department may suspend a license. 16-12-109(1)(c) states the department may suspend for up to 3 months; 16-12-210(6) allows suspension for up to 1 year. ARM 42.39.501(1) adopted the one-year maximum for suspension	Amend one of the statutes for consistency
16-12-110 16-12-532	Legislative Monitoring	Multiple statutes	16-12-110 outlines legislative monitoring duties for chapter 12, including reports regarding licensees pursuant to 16-12-203: cultivators, manufacturers, and dispensaries, as well as a report on inspections pursuant to 16-12-210.  16-12-532 also outlines legislative monitoring duties; however it is pursuant to part 5, which is medical marijuana. It requires reporting of registered cardholders and supporting information on the medical marijuana program.  All of the reports listed above are due by the Dept. of Revenue. Additionally, the Board of Medical Examiners owes a report under 16-12-532.  Since EAIC is responsible for monitoring both the adult-use and medical marijuana programs, it may not be necessary to have separate statutes listing legislative monitoring duties for each program.	Combine statutes
16-12-115 16-12-116 3-5-113 3-5-115	Appointment of judge Petition for expungement Judges Pro Tempore... Agreement, Petition...	Unnecessary statute for expungement court	16-12-115 (appointment of judge) was a new section of law created to establish a marijuana expungement court and provides for an appointment of a judge pro tempore or special master to preside over the expungement court. According to the Court Administrator's Office, based on the number of expungement requests seen to date, this separate court may not be necessary, in which case, there is no need for reference to this court in statute.	Consider repealing 16-12-115 (special judge and specific marijuana expungement court) and if so, removing references to 16-12-115 in 16-12-116, 3-5-113, and 3-5-115
16-12-125	Hotline	Identity of complainant	16-12-125 provides that a complainant must be a resident and provide their name, address, and phone number in order to log a complaint to the department. In addition, the licensee is to be provided a copy of the complaint and the complainant's name and city of residence is not to be redacted from the complaint. Several constituents have expressed concern about this provision and are unwilling to utilize the hotline for fear of retribution.	Consider alternatives to provision.
16-12-129 16-12-226	Department to conduct background checks Marijuana worker permit -- requirements	Background Checks	16-12-129(3)(a) requires an employee of a marijuana business undergo a criminal background check, and 16-12-226(7) requires the holder of a worker permit to report to the department if they receive a conviction of a felony or a citation for a violation of a marijuana law in this or any state. DOR initially made a rule to suspend or revoke a worker permit in the case of certain criminal convictions, however, EAIC stated that was not the legislative intent, so the department amended the rule and removed said language. DOR is currently requiring background checks but not disqualifying anyone based on results. This requirement is creating a bottleneck for employers looking to hire new employees	Consider removing the requirement for background checks for worker permits. Consider removing the language in 16-12-226 requiring holders of worker permits report convictions and citations to the department.
16-12-203	Licensing types -- requirements -- limitations -- activities	Licensee's Ability to Wholesale	The language in 16-12-203(1)(a)(iii)(A) requiring a licensee to declare that it will not divert marijuana to other licensees unless sold as part of a sale of a business appears to be carry-over from Med. Marijuana program, which had vertical integration. This conflicts with overall intent of the Act and its move to horizontal integration and specifically conflicts with 16-12-102(1)(a) and 16-12-203(7)(a).	Consider amending 16-12-203 to remove references to vertical integration
16-12-207	Licensing as privilege - criteria	Minimum Age to Enter a Marijuana Business	HB701 requires employees of marijuana businesses to be 18 years of age or older. 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 potential constitutional conformity issue. However, a potentially conflicting provision was also passed in Section 54 of HB701, 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."	The inconsistency 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 <u>an employee of the marijuana business</u> or a registered cardholder.

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16-12-221	Manufacturer Licensing	Fee structure	<p>16-12-221(6)(a) provides fees for manufacturers based on the amount of concentrate produced on a monthly basis. (6)(b) allows the department to create additional fee levels as necessary.</p> <p>ARM 42.39.104 is the general rule for all license, application, and renewal fees for marijuana licenses that was adopted, effective 1/1/22. Subsection (1)(f) outlines manufacturing licensing fees and generally follows 16-12-221, MCA:</p> <p>(i) \$5,000 for less than 10 pounds of concentrate (16-12-221(6)(a)(i): \$5,000 for less than 1 pound and up to 10 pounds)</p> <p>(ii) \$10,000 for between 10 and 15 pounds of concentrate (16-12-221(6)(a)(ii): \$10,000 for between 10 and 15 pounds)</p> <p>(iii) \$20,000 for 15 pounds of concentrate (16-12-221(6)(a)(iii): \$20,000 for 15 pounds or more)</p> <p>(iv) \$1,000 for each pound over 15 pounds (not in statute)</p>	<p>Statute allows the department to create additional fee levels as necessary in 16-12-221(6)(b); however, the rule as adopted does not follow the statute as currently written.</p> <p>Consider amending either the rule or the statute for consistency and clarity.</p>
16-12-223	Licensing of cultivators	Certain licensees increasing tiers at renewal	<p>The department maintains that 16-12-223(1)(e) only allows a cultivator to advance to the next licensing tier in conjunction with a regular renewal application, including "grandfathered" licensees.</p>	<p>Amend 16-12-223(1)(e)(iii) to read:</p> <p>(iii) Between January 1, 2022, and June 30, 2023, a cultivator may, <u>at any time</u>, increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B). Note: "Grandfathered" licensees may increase tiers by more than one at a time between January 1, 2022 and June 30, 2023. By the time the statute is fixed, it would only leave for a brief period in which the change would be effective.</p> <p>Notes:</p> <p>This section will need an immediate effective date, otherwise the amendment will be moot. An additional consideration is that based on the timing of regular annual renewals, "grandfathered" licensees may already have tiered up to tier 5 before passage of the cleanup bill, so few licensees may be able to take advantage of this.</p>
16-12-225	Combined-use marijuana licensing - requirements	Tier-1 language	<p>16-12-225(2) plainly states that a combined-use license consists of "one tier 1 canopy license and one dispensary license". Several stakeholders have raised the question if this means the license is limited to a tier 1 canopy or if this is the starting point of the canopy, and then the licensee will be able to increase tiers as allowed in the chapter.</p> <p>Additional questions were raised regarding subsection (2) as to why the combined-use licensee must operate the cultivation and dispensary facilities on the same licensed premises.</p>	Review the statute for clarity
16-12-129 16-12-226	Department to conduct background checks Marijuana Worker Permit	Dates (general cleanup)	<p>16-12-129(3)(b) requires DOR to conduct criminal background checks . . . Within 90 days of January 1, 2022, which will no longer be relevant in 2023.</p> <p>16-12-226(2)(b) states requirements for obtaining worker permits no later than 90 days after 1/1/2022, which will no longer be relevant in 2023</p>	Consider general cleanup of this statute to remove references to outdated dates
16-12-302 16-12-524	Fraudulent Representation - Penalties	Multiple statutes	Both statutes outline penalties for fraudulent representation. 16-12-524 is specific to medical marijuana.	Combine statutes for consistency and clarity as they are contained in the same title and chapter
45-9-109	Criminal Distribution of Dangerous Drugs On Or Near School Property	Unclear/possible confusion	<ul style="list-style-type: none"> <li>• A person is in violation of criminal distribution of dangerous drugs on school property (45-9-109) if the person violates 45-9-101 within 1,000 feet of a school.</li> <li>• However, 45-9-101 was amended to say that "except as provided in Title 16, chapter 12" a person commits the offense of criminal distribution of dangerous drugs</li> <li>• 16-12-207 allows dispensaries to sell marijuana within 500 feet of schools (unless local provisions require a further distance)</li> <li>• So, as long as dispensaries are 500 feet or more from schools, it appears they aren't in violation of 45-9-101; however 45-9-101 was not amended to clarify.</li> </ul>	Consider reviewing relevant statutes to provide clarity. Another consideration is reviewing the definition of "dangerous drug" as defined in Title 50, chapter 32, part 2 to potentially exclude marijuana lawfully sold by a state licensed dispensary.
Title 61, chapter 8, part 4	Oral Fluid Drug Screening	Repeal of Title 61, chapter 8, part 4	Sections 87 through 91 of HB701 amended sections within Title 61, chapter 8, part 4, primarily to add oral fluid drug screening to various listing of appropriate and admissible testing for the presence and concentration of drugs and alcohol. However, SB365 repealed T.61,c.8,p.4 in its entirety as part of a general revision and reorganization of MT's DUI laws, so these sections were never codified.	<p>Look at Title 61, chapter 8, part 10, which is where the newly codified DUI laws are to see what amendments should be made to include admissible tests for marijuana screening.</p> <p>These amendments can be part of the EAIC housekeeping bill for HB701, or can be recommendations for a bill through LJIC, or an agency bill from DOJ. Both LJIC and DOJ are aware of the need to address the issue, so the committees/agency should work together to see where this makes the most sense...</p>