

HOUSE BILL 701 CLEANUP OPTIONS

BACKGROUND AND PURPOSE

Senate Joint Resolution 31 (2021), assigned to the Economic Affairs Interim Committee (EAIC), is an interim study of the implementation of Montana's recreational marijuana program, made possible through the passage of Initiative 190 (I-190). House Bill 701 (HB 701), passed during the 2021 legislative session, implements I-190 and makes statutory changes to the medical marijuana program.

This paper outlines potential policy options the EAIC could introduce in a committee bill for the upcoming 2023 legislative session. *It is important to note* that these are draft recommendations, options, and reasons developed by staff based on committee hearings and discussions to date.

Note: References to statute are for the Montana Code Annotated (MCA), references to rule are for the Administrative Rules of Montana (ARM), and references to the department are for the Department of Revenue.

OPTIONS

ISSUE: INCONSISTENCY IN DEFINITIONS

Explanation:

Title 15, chapter 64, governs the taxation of drugs and provides a definition for a "purchaser" as:

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

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

The Marijuana Regulation and Taxation Act provides a definition for a "consumer" as:

16-12-102. Definitions. As used in this chapter, the following definitions apply:

(5) "Consumer" means a person 21 years of age or older who obtains or possesses marijuana or marijuana products for personal use from a licensed dispensary but not for resale.

In other words, a consumer purchases marijuana from a licensed dispensary. Section 15-64-101, MCA, references definitions in 16-12-102, MCA, for several terms, including "adult-use dispensary," "marijuana," "marijuana product," and "medical marijuana dispensary."

Statutes affected:

15-64-101. Definitions.

16-12-102. Definitions.

Recommendation:

Review statutes and revise definitions to remove inconsistencies in definitions.

Committee options:

Option A: Revise 15-64-101, MCA, for consistency with 16-12-102, MCA.

Option B: Revise 16-12-102, MCA, for consistency with 15-64-101, MCA.

Option C: Revise both statutes.

Option D: Leave as is.

ISSUE: DEFINITION OF HEMP

Explanation:

Section 16-12-102, MCA, provides for the following definitions:

16-12-102. Definitions. As used in this chapter, the following definitions apply:

(20) (a) "Marijuana" means all plant material from the genus *Cannabis* containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(b) The term does not include *hemp*, including any part of that plant, including the seeds and all derivatives, extracts, *cannabinoids*, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis, or commodities or products manufactured with hemp, or any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products. (emphasis added)

(24) "Marijuana product" means a product that contains marijuana and is intended for use by a consumer by a means other than smoking. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, and marijuana concentrates.

(26) "Mature marijuana plant" means a harvestable marijuana plant.

Section 16-12-208, MCA, restricts dispensaries from selling all forms of hemp:

16-12-208. Restrictions.

(7) An adult-use dispensary or medical marijuana dispensary may not sell or otherwise transfer hemp or alcohol from a licensed premises.

Section 16-12-224, MCA, authorizes licensed dispensaries to sell the following:

16-12-224. Licensing of dispensaries.

(4) A medical marijuana dispensary is authorized to sell exclusively to registered cardholders *marijuana, marijuana products, and live marijuana plants*. (emphasis added)

(5) An adult-use dispensary is authorized to sell *marijuana, marijuana products, and live marijuana plants* to consumers or registered cardholders. (emphasis added)

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. After multiple hearings with the EAIC and the public, the Department of Revenue revised ARM 42.39.409:

(13) The prohibition in 16-12-208, MCA, on marijuana dispensaries selling hemp is limited to hemp flower and hemp plants.

Statutes affected:

16-12-102. Definitions.

16-12-208. Restrictions.

16-12-224. Licensing of dispensaries.

Recommendation:

Review the description of hemp in 16-12-102(20)(b), MCA, for clarity. Alternatively, review 16-12-208 (Restrictions) and 16-12-224 (Licensing of dispensaries) to add permissive language for dispensaries to sell CBD.

Committee options:

Option A: Revise the description of hemp in 16-12-102(20)(b), MCA, for clarity.

Option B: Revise 16-12-208, MCA, (Restrictions) to add permissive language for dispensaries to sell CBD.

Option C: Revise 16-12-224, MCA, (Licensing of dispensaries) to add permissive language for dispensaries to sell CBD.

Option D: Revise more than one statute for clarity (combination of A, B, C).

Option E: Leave as is (remain as an administrative rule update).

ISSUE: LACK OF "CATCH-ALL" PENALTY PROVISION

Explanation:

Subsections (2) through (7) 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, 16-12-106, MCA, 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 (the act) but not specifically addressed in 16-12-106, MCA, the act does not contain a penalty provision. One example is possession or consumption in any of the places listed in 16-12-108(1)(g), MCA, such as public transportation or a motel or hotel room.

Statutes affected:

16-12-106. Personal use and cultivation of marijuana -- penalties

Recommendation:

Consider adding a catch-all penalty provision in 16-12-106, MCA, such as:

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

Committee options:

Option A: Add a "catch-all" penalty provision to 16-12-106, MCA.

Option B: Leave as is.

ISSUE: DELIVERY, DISTRIBUTION, PURCHASE, CONSUMPTION, USE UNDER 21

Explanation:

Section 16-12-108, MCA, limits the delivery, distribution, purchase, consumption, and use of marijuana:

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

(d) delivery or distribution of marijuana or marijuana products, with or without consideration, to a person under 21 years of age;

- (e) purchase, consumption, or use of marijuana or marijuana products by a person under 21 years of age;
- (f) possession or transport of marijuana or marijuana products by a person under 21 years of age unless the underage person is at least 18 years of age and is an employee of a marijuana business licensed under this chapter and engaged in work activities;

Section 16-12-109, MCA, provides for penalties for unlawful conduct by licensees:

16-12-109. Unlawful conduct by licensees – penalties.

- (5) The department shall revoke and may not reissue a license or endorsement belonging to a person:
 - (f) who sells, distributes, or transfers marijuana or marijuana products to a person the licensee knows or should know is under 21 years of age.

There is no consideration in either statute for exceptions for registered cardholders.

Statutes affected:

16-12-108. Limitations of act.

16-12-109. Unlawful conduct by licensees -- penalties.

Recommendation:

Consider adding clarifying language, such as:

"unless the person is a registered cardholder"

Committee options:

Option A: Add clarifying language to 16-12-108, MCA.

Option B: Add clarifying language to 16-12-109, MCA.

Option C: Revise both statutes.

Option D: Leave as is.

ISSUE: CONFLICTING LANGUAGE

Explanation:

There are conflicting provisions regarding the length of time the Department of Revenue (department) may suspend a license.

Section 16-12-109, MCA, provides for penalties for unlawful conduct by licensees:

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

- (a) reprimand a licensee;
- (b) revoke the license of the licensee;
- (c) suspend the license for a *period of not more than 3 months*;
- (d) refuse to grant a renewal of the license after its expiration; or
- (e) impose a civil penalty not to exceed \$3,000. (emphasis added)

Section 16-12-210, MCA, provides for penalties regarding inspections:

16-12-210. Inspections – procedures – prohibition on inspector affiliation with licensees.

(6) In addition to any other penalties provided under this chapter, *the department may revoke, suspend for up to 1 year, or refuse to renew a license or endorsement issued under this chapter if, upon inspection and subsequent notice to the licensee, the department finds that any of the following circumstances exist:*

- (a) a cause for which issuance of the license or endorsement could have been rejected had it been known to the department at the time of issuance;
- (b) a violation of an administrative rule adopted to carry out the provisions of this chapter; or
- (c) noncompliance with any provision of this chapter.

The standards for suspension under 16-12-109, MCA, and 16-12-210, MCA, are essentially the same, with each statute requiring a showing the licensee has violated a provision of the Act or a rule of the department. Notice is provided to the licensee when the department seeks to suspend under either statute.

The department adopted rules regarding suspension and revocation of a license in ARM 42.39.504 and adopted the one-year maximum for suspension of licenses:

42.39.504 Suspension and Revocation of a License

- (1) The department may suspend a license for any period of time not to exceed one year.

Statutes affected:

16-12-109. Unlawful conduct by licensees -- penalties.

16-12-210. Inspections -- procedures -- prohibition on inspector affiliation with licensees.

Recommendation:

Amend one of these statutes for consistency.

Committee options:

Option A: Amend 16-12-109, MCA to allow for suspension for up to one-year.

Option B: Amend 16-12-210, MCA to allow for suspension for up to three months and recommend to the Department of Revenue that it amend ARM 42.39.504 to follow an amended 16-12-210, MCA.

Option C: Leave as is.

ISSUE: MULTIPLE STATUTES FOR LEGISLATIVE MONITORING

Explanation:

Section 16-12-110, MCA, outlines legislative monitoring duties for Title 16, chapter 12, MCA, including reports regarding licensees pursuant to 16-12-203, MCA, (e.g., cultivators, manufacturers, and dispensaries) as well as a report on inspections pursuant to 16-12-210, MCA.

Section 16-12-532, MCA, also outlines legislative monitoring duties; however, it is pursuant to Title 16, chapter 12, part 5, MCA, which is medical marijuana. It requires reporting of registered cardholders and supporting information on the medical marijuana program.

All the reports listed above are due by the Department of Revenue. Additionally, the Board of Medical Examiners owes a report under 16-12-532, MCA.

Since the 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.

Statutes affected:

16-12-110. Legislative monitoring.

16-12-532. Legislative monitoring.

Recommendation:

Combine statutes.

Committee options:

Option A: Combine statutes.

Option B: Leave as is.

 ISSUE: UNNECESSARY STATUTE FOR EXPUNGEMENT COURT

Explanation:

Section 16-12-115, MCA, (Appointment of judge) is a new section of law created to establish a marijuana expungement court and provide for the appointment of a judge pro tempore or special master to preside over the expungement court.

16-12-115. Appointment of judge. (1) A petition for expungement or resentencing of a marijuana conviction filed as provided in 16-12-113 may be determined by a judge pro tempore or special master, who must be a member of the bar of the state, agreed on in writing by the petitioner and the county attorney, appointed by the supreme court as provided in 3-5-115, and sworn to determine whether the petitioner meets the criteria for expungement or resentencing as provided in 16-12-113. On appointment, the individual must be designated as the *decriminalized marijuana conviction expungement judge*. (emphasis added)

(2) A judge appointed under subsection (1) has the authority and power of an elected district court judge in the civil action involving petitions filed as provided in 16-12-113. All proceedings must be conducted in accordance with the rules of evidence and procedure governing district courts.

(3) *Any determination rendered in a petition by the judge has the same force and effect as if determined by the district court with the regular judge presiding.* (emphasis added)

(4) A party stipulating to have a petition determined by the judge appointed under subsection (1) may not file a motion for substitution of the judge pursuant to 3-1-804.

(5) *All filings relating to a petition as provided in 16-12-113 must be filed with the clerk of court in the judicial district in which the marijuana conviction took place.* The applicant and the county attorney shall provide a copy of each filing to the judge appointed as provided in subsection (1). (emphasis added)

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.

Statutes affected:

16-12-115. Appointment of judge.

16-12-116. Petition for expungement -- venue.

3-5-113. Judges pro tempore -- special masters -- scope of authority in criminal and civil cases.

3-5-115. Agreement, petition, and appointment of judge pro tempore -- waiver of jury trial.

Recommendations:

- Repeal 16-12-115, MCA.
 - *Note:* Repealing 16-12-115, MCA, results in amending 16-12-116, 3-5-113, and 3-5-115, MCA, to remove the reference to a repealed statute.

- Amend 16-12-115, MCA, to follow the temporary rules of district judges ruling on expungement petitions.

Committee options:

Option A: Repeal 16-12-115, MCA.

Option B: Amend 16-12-115, MCA.

Option C: Leave as is.

ISSUE: IDENTITY OF COMPLAINANT

Explanation:

16-12-125. Hotline.

(2) An individual making a complaint must be a resident and shall provide the individual's name, street address, and phone number.

(3) (a) The department shall provide a copy of the complaint to the person or licensee that is the subject of the complaint.

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

Section 16-12-125, MCA, 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 of Revenue. 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.

Statutes affected:

16-12-125. Hotline.

Recommendation:

Consider alternatives to provision.

Committee options:

Option A: Remove identity requirement in 16-12-125, MCA.

Option B: Leave as is.

ISSUE: BACKGROUND CHECKS

Explanation:

Section 16-12-129, MCA, requires the Department of Revenue (department) to conduct background checks:

16-12-129. Department to conduct background checks.

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

Section 16-12-226, MCA, provides requirements for marijuana worker permits:

16-12-226. Marijuana worker permit -- requirements.

(7) A person who holds a marijuana worker permit must notify the department in writing within 10 days of:

(a) a conviction of a felony;

(b) the issuance of any citation for violating a marijuana law imposed under this chapter or the marijuana laws of any other state; or

(c) the issuance of any citation for selling or dispensing alcohol or tobacco products to a minor.

The department initially proposed a draft rule that would have made certain criminal convictions the basis for the suspension or revocation of a worker permit. However, EAIC stated the legislative intent of HB701 was that criminal convictions should not serve as a basis to suspend or revoke, and that employers should be free to hire individuals with criminal histories if they so choose. The rule was amended to remove the language regarding suspension and revocation. The department is currently requiring background checks but is not disqualifying anyone based on results. According to the department, this requirement is creating a bottleneck for employers looking to hire new employees.

Statutes affected:

16-12-129. Department to conduct background checks.

16-12-226. Marijuana worker permit -- requirements.

Recommendation:

- Remove the requirement for background checks for worker permits.
- Remove the language in 16-12-226, MCA, requiring the holders of worker permits to report to the department (a) a conviction for a felony; (b) the issuance of any citation for violating a marijuana law imposed under this chapter or the marijuana laws of any other state; or (c) the issuance of any citation for selling or dispensing alcohol or tobacco products to a minor.

Committee options:

Option A: Amend 16-12-129, MCA.

Option B: Amend 16-12-226, MCA.

Option C: Amend both statutes.

Option D: Leave as is.

ISSUE: LICENSEE'S ABILITY TO WHOLESAL

Explanation:

Section 16-12-203, MCA, provides for requirements, limitations, and activities for marijuana licensing types:

16-12-203. Licensing types -- requirements -- limitations -- activities. (1) (a) Subject to subsection (3) and this subsection (1), the department shall issue a license to renew a license for a person who is applying to be a cultivator, manufacturer, medical marijuana dispensary, adult-use dispensary, or testing laboratory if the person submits to the department:

...

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

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

The language in 16-12-206(1)(a)(iii)(A), MCA, requiring a licensee to declare that it will not divert marijuana or marijuana products to other licensees unless the marijuana or marijuana products are sold to another licensee as part of a sale of a business appears to be a carry-over from the Medical Marijuana program and its requirement that marijuana licensees be vertically integrated:

(Repealed) 50-46-308. Provider types -- requirements -- limitations -- activities. (1) (a) Subject to subsections (1)(b) and (3), the department shall issue a license to or renew a license for the person who is names as a provider or marijuana-infused products provider in a registered cardholder's approved application if the person submits to the department:

...

(v) a statement, on a form prescribed by the department, that the person will not divert to any other person the marijuana that the person cultivates or the marijuana-infused products that the person manufactures for a registered cardholder;

The language in 16-12-206(1)(a)(iii)(A), MCA, conflicts with the overall intent of the Act and its move to horizontal integration and specifically conflicts with the following provisions:

16-12-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Adult-use dispensary" means a licensed premises from which a person licensed by the department may:

(a) obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or other licensee approved under this chapter; and

16-12-203. Licensing types -- requirements -- limitations -- activities.

(7) A cultivator or manufacturer:

(a) may contract or otherwise arrange for another party that is licensed to process a cultivator's or manufacturer's marijuana into marijuana products and return the marijuana products to the cultivator or manufacturer for sale; and

Through the recommendation of EAIC, the Department of Revenue promulgated ARM 42.39.405(1) to prevent a cultivator from wholesaling flower to another cultivator:

42.39.405. Marijuana Cultivator Licenses

(1) A marijuana cultivator license allows a marijuana cultivator to plant, cultivate, grow, dry, package, and label marijuana and sell marijuana to licensed marijuana manufacturers, licensed dispensaries, and to other licensed marijuana cultivators, and to sell marijuana products to licensed dispensaries. *Marijuana cultivator licensees may not sell marijuana flower to other marijuana cultivator licensees.* (emphasis added)

Recommendation:

Consider amending 16-12-203 to remove references to vertical integration, such as:

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

Committee Options:

Option A: Amend 16-12-203, MCA

Option B: Leave as is.

ISSUE: MINIMUM AGE TO ENTER A MARIJUANA BUSINESS

Explanation:

HB 701 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.

A potentially conflicting provision was also passed in section 54 of HB 701, amending 16-12-207, MCA:

16-12-207. Licensing as a privilege – criteria.

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

Statutes affected:

16-12-207. Licensing as a privilege – criteria.

Recommendation:

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 an employee of the marijuana business or a registered cardholder.

Committee options:

Option A: Amend 16-12-207, MCA.

Option B: Leave as is.

ISSUE: FEE STRUCTURE

Explanation:

Section 16-12-221, MCA, provides fees for manufacturers based on the amount of concentrate produced on a monthly basis and allows the Department of Revenue (department) to create additional fee levels as necessary.

16-12-221. Manufacturer – requirements – limitations – fees.

(6) (a) The department shall charge a manufacturer license fee for an initial application and at each renewal. The license fee is based on the amount of concentrate produced at a manufacturing facility on a monthly basis. The annual fees for licensees are:

- (i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than 1 pound of concentrate and up to 10 pounds of concentrate;
 - (ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between 10 pounds of concentrate and 15 pounds of concentrate; and
 - (iii) *\$20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds or more of concentrate.* (emphasis added)
- (b) The department may create additional fee levels as necessary.

ARM 42.39.104 is the general rule for all license, application, and renewal fees for marijuana licenses that was adopted, effective January 1, 2022. Subsection (1)(f) of ARM 42.39.104 outlines manufacturing licensing fees and generally follows 16-12-221, MCA.

- (i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than ten pounds of concentrate;
- (ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between ten pounds of concentrate and 15 pounds of concentrate;
- (iii) \$20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds of concentrate; and
- (iv) any manufacturing licensee that produces, on a monthly basis, more than 15 pounds of concentrate, *shall pay an additional \$1,000 per pound.* (emphasis added)

Statute allows the department to create additional fee levels as necessary in 16-12-221(6)(b), MCA; however, the rule as adopted does not follow the statute as currently written.

Statutes affected:

16-12-221. Manufacturer licensing.

Recommendation:

Consider amending either the rule or the statute for consistency and clarity.

Committee options:

Option A: Amend 16-12-221, MCA, to follow ARM 42.39.104.

Option B: Recommend the Department of Revenue amend ARM 42.39.104 to follow 16-12-221, MCA.

Option C: Amend both statute and rule.

Option D: Leave as is.

ISSUE: CERTAIN LICENSES INCREASING TIERS AT RENEWAL

Explanation:

Section 16-12-223, MCA, is unclear on when a cultivator may "tier-up" during the moratorium—at annual renewal or at their discretion.

Statutes affected:

16-12-223. Licensing of cultivators.

Recommendation:

Consider amending 16-12-223(1)(e)(iii), MCA, to read:

(iii) Between January 1, 2022, and June 30, 2023, a cultivator may at any time, 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).

Notes: 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 have already tiered up to tier 5 before passage of the cleanup bill, so few licensees may be able to take advantage of this.

Committee options:

Option A: Amend 16-12-223, MCA.

Option B: Leave as is.

ISSUE: COMBINATION-USE LICENSE

Explanation:

Section 16-12-225(2), MCA, 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.

Additional questions were raised regarding subsection (2) of 16-12-225, MCA, as to why the combined-use licensee must operate the cultivation and dispensary facilities on the same licensed premises and why there is no revenue sharing agreement provided for the tribes in the Marijuana Regulation and Taxation Act.

Statutes affected:

16-12-225. Combined-use marijuana licensing -- requirements.

Recommendation:

Review the statute for clarity and to address the concerns above.

Committee options:

Option A: Amend 16-12-225, MCA.

Option B: Leave as is.

ISSUE: DATES (GENERAL CLEANUP)

Explanation:

Section 16-12-129(3)(b), MCA, requires the Department of Revenue (department) to conduct a criminal background check on an employee of a former medical marijuana licensee in good standing with the department within 90 days of January 1, 2022, which will no longer be relevant in 2023.

Section 16-12-226(2)(b), MCA, states requirements for obtaining worker permits no later than 90 days after January 1, 2022, which will no longer be relevant in 2023.

Statutes affected:

16-12-129. Department to conduct background checks.

16-12-226. Marijuana worker permit -- requirements.

Recommendation:

Consider general cleanup of these statutes to remove references to outdated dates.

Committee options:

Option A: Amend 16-12-129, MCA.

Option B: Amend 16-12-226, MCA.

Option C: Amend both statutes.

Option D: Leave as is.

 ISSUE: MULTIPLE STATUTES FOR FRAUDULENT REPRESENTATION – PENALTIES

Explanation:

Both 16-12-302 and 16-12-524, MCA, outline penalties for fraudulent representation.

16-12-302. Fraudulent representation – penalties. (1) In addition to any other penalties provided by law, an individual who fraudulently represents to a law enforcement official that the individual is a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, testing laboratory, or marijuana transporter or has a marijuana worker permit is guilty of a civil fine not to exceed \$1,000.

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

16-12-524. Fraudulent representation – penalties. (1) In addition to any other penalties provided by law, an individual who fraudulently represents to a law enforcement official that the individual is a registered cardholder is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed \$1,000, or both.

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

Statutes affected:

16-12-302. Fraudulent representation -- penalties.

16-12-524. Fraudulent representation -- penalties.

Recommendation:

Review statutes for consistency and clarity. Consider combining statutes as they are contained in the same title and chapter.

Committee options:

Option A: Combine statutes.

Option B: Leave as is.

ISSUE: POSSIBLE CONFUSION REGARDING CRIMINAL DISTRIBUTION OF DANGEROUS DRUGS

Explanation:

A person is in violation of criminal distribution of dangerous drugs on school property if the person violates 45-9-101, MCA, within 1,000 feet of a school.

45-9-109. Criminal distribution of dangerous drugs on or near school property – penalty – affirmative defense. (1) A person commits the offense of criminal distribution of dangerous drugs on or near school property if the person violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

However, 45-9-101, MCA, was amended to say: "[e]xcept as provided in Title 16, chapter 12, a person commits the offense of criminal distribution of dangerous drugs." (emphasis added)

45-9-101. Criminal distribution of dangerous drugs. (1) Except as provided in Title 16, chapter 12, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

50-32-101. Definitions. As used in this chapter, the following definitions apply:

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V set forth in Title 50, chapter 32, part 2.

50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(x) marijuana;

Section 16-12-207, MCA, allows dispensaries to sell marijuana within 500 feet of schools, unless local provisions require a further distance.

16-12-207. Licensing as privilege – criteria.

(3) (a) The department shall deny a cultivator license, manufacturer license, adult-use dispensary license, or medical marijuana license if the applicant's proposed licensed premises:

(iii) is within 500 feet of and on the same street as a building used exclusively as a . . . school or postsecondary school other than a commercially operated school, unless the locality requires a greater distance.

Therefore, as long as dispensaries are 500 feet or more from schools, it appears they are not in violation of 45-9-101, MCA; however, 45-9-109, MCA, was not amended to clarify.

Statutes affected:

45-9-109. Criminal distribution of dangerous drugs on or near school property -- penalty -- affirmative defense.

Recommendation:

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.

Committee options:

Option A: Amend 45-9-101, MCA.

Option B: Revise definition of "dangerous drug" to exclude marijuana lawfully sold by a state-licensed dispensary.

Option C: Revise both statutes.

Option D: Leave as is.

ISSUE: REPEAL OF TITLE 61, CHAPTER 8, PART 4

Explanation:

Sections 87 through 91 of HB 701 amended sections within Title 61, chapter 8, part 4, MCA, 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, Senate Bill 365 repealed Title 61, chapter 8, part 4, MCA, in its entirety as part of a general revision and reorganization of Montana's driving under the influence (DUI) laws, so these sections were never codified.

Statutes affected:

Title 61, chapter 8, part 4, MCA.

Recommendation:

Look at Title 61, chapter 8, part 10, MCA, which is where the newly codified DUI laws are in order to see what amendments should be made to include admissible tests for marijuana screening. Consider using sections 87 through 91 of HB 701 as a guide for amendment language.

Note: These amendments can be part of the EAIC housekeeping bill for HB 701, or they can be recommendations for a bill through the Law and Justice Interim Committee (LJIC) or an agency bill from the Department of Justice (DOJ). Both the LJIC and the DOJ are aware of the need to address the issue; however, neither have committed to bringing a bill forward to

address the issue at the next legislative session. The committees and agency should work together to see where this makes the most sense.

Committee options:

Option A: Revise Title 61, chapter 8, part 10, MCA, to include sections originally included in HB 701 related to oral fluid drug screening.

Option B: Recommend the LJIC submit a committee bill for necessary amendments.

Option C: Recommend the DOJ submit an agency bill for necessary amendments.

Option D: Leave as is.

EFFECTIVE DATES

With some exceptions, bills passed during a legislative session generally become effective on October 1 of the year in which the bill was passed, unless the bill provides for all or parts of the bill to go into effect on a different date.

Appropriations are generally effective on July 1 of the year of passage, unless the appropriation is delayed for some reason.

Any provisions needing an earlier effective date could be made effective on passage and approval of the legislation.