

Amendment - 1st Reading/2nd House-blue - Requested by: Jason Ellsworth - (S) Business, Labor, and Economic Affairs

- 2023

68th Legislature 2023

Drafter: Erin Sullivan, 406-444-3594

HB0903.001.003

HOUSE BILL NO. 903

INTRODUCED BY M. HOPKINS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO MARIJUANA; ALLOWING A COMBINED-USE LICENSE TO INCREASE CANOPY TIERS; REQUIRING A REPORT TO THE BOARD OF MEDICAL EXAMINERS UNDER CERTAIN CONDITIONS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 16-12-223, AND 16-12-225, AND 16-12-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 16-12-223, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) the tracking system shows the cultivator is selling at least 80% of the marijuana produced by

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1 the square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can

2 otherwise demonstrate to the department that there is a market for the marijuana it seeks to produce; and

3 (C) its proposed additional or expanded indoor cultivation facility or facilities are located in a

4 jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied or that

5 they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the

6 November 3, 2020, general election.

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

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

12 (iii) A cultivator under a combined-use license may increase its licensure level by more than one
13 tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and
14 (1)(e)(i)(B).

15 (iv) The department shall conduct an inspection of the cultivator's registered premises and
16 proposed premises within 30 days of receiving the application and before approving the application.

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

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

20 (3) The department may adopt rules:

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

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

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

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

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

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- (b) \$2,500 for a cultivator with a tier 1 canopy license;
- (c) \$5,000 for a cultivator with a tier 2 canopy license;
- (d) \$7,500 for a cultivator with a tier 3 canopy license;
- (e) \$10,000 for a cultivator with a tier 4 canopy license;
- (f) \$13,000 for a cultivator with a tier 5 canopy license;
- (g) \$15,000 for a cultivator with a tier 6 canopy license;
- (h) \$17,500 for a cultivator with a tier 7 canopy license;
- (i) \$20,000 for a cultivator with a tier 8 canopy license;
- (j) \$23,000 for a cultivator with a tier 9 canopy license;
- (k) \$27,000 for a cultivator with a tier 10 canopy license;
- (l) \$32,000 for a cultivator with a tier 11 canopy license; and
- (m) \$37,000 for a cultivator with a tier 12 canopy license.

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

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

Section 2. Section 16-12-225, MCA, is amended to read:

"16-12-225. 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) Initial licensure and annual fees for a combined-use license is \$7,500.

~~(3)~~(4) A combined-use marijuana licensee shall operate its cultivation and dispensary facilities on

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1 land that is located:

2 (a) within 150 air-miles of the exterior boundary of the associated tribal reservation or, for the Little
3 Shell Chippewa tribe only, within 150 air-miles of the tribal service area; and

4 (b) in a county that has satisfied the local government approval provisions in 16-12-301 if the
5 majority of voters in the county voted against approval of Initiative Measure No. 190 in the November 3, 2020,
6 general election.

7 ~~(4)~~(5) An applicant under this section must satisfy all licensing requirements under this chapter and is
8 subject to all fees and taxes associated with the cultivation and sale of marijuana or marijuana products
9 provided for in this chapter.

10 ~~(5)~~(6) A license granted under this section must be operated in compliance with all requirements
11 imposed under this chapter.

12 ~~(6)~~(7) After a tribe or a majority-owned business of that tribe is licensed under this section, that tribe
13 or another majority-owned business of that tribe may not obtain another combined-use license until the prior
14 license is relinquished, lapses, or is revoked by the department."
15

16 **Section 3.** Section 16-12-509, MCA, is amended to read:

17 **"16-12-509. Written certification -- accompanying statements.** (1) The written certification
18 provided by a physician must be made on a form prescribed by the department and signed and dated by the
19 physician. The written certification must:

20 (a) include the physician's name, license number, and office address and telephone number on file
21 with the board of medical examiners and the physician's business e-mail address, if any; and

22 (b) the name, date of birth, and debilitating medical condition of the patient for whom the physician
23 is providing written certification.

24 (2) A treating physician or referral physician who is providing written certification for a patient shall
25 provide a statement initialed by the physician that must:

26 (a) confirm that the physician is:

27 (i) the patient's treating physician and that the patient has been under the physician's ongoing

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1 medical care as part of a bona fide professional relationship with the patient; or

2 (ii) the patient's referral physician;

3 (b) confirm that the patient suffers from a debilitating medical condition;

4 (c) describe the debilitating medical condition, why the condition is debilitating, and the extent to

5 which it is debilitating;

6 (d) confirm that the physician has assumed primary responsibility for providing management and

7 routine care of the patient's debilitating medical condition after obtaining a comprehensive medical history and

8 conducting a physical examination, whether in person or, in accordance with subsection (4), through the use of

9 telemedicine, that included a personal review of any medical records maintained by other physicians and that

10 may have included the patient's reaction and response to conventional medical therapies;

11 (e) describe the medications, procedures, and other medical options used to treat the condition;

12 (f) confirm that the physician has reviewed all prescription and nonprescription medications and

13 supplements used by the patient and has considered the potential drug interaction with marijuana;

14 (g) state that the physician has a reasonable degree of certainty that the patient's debilitating

15 medical condition would be alleviated by the use of marijuana and that, as a result, the patient would be likely to

16 benefit from the use of marijuana;

17 (h) confirm that the physician has explained the potential risks and benefits of the use of marijuana

18 to the patient;

19 (i) list restrictions on the patient's activities due to the use of marijuana;

20 (j) specify the time period for which the use of marijuana would be appropriate, up to a maximum

21 of 1 year;

22 (k) state that the physician will:

23 (i) continue to serve as the patient's treating physician or referral physician; and

24 (ii) monitor the patient's response to the use of marijuana and evaluate the efficacy of the

25 treatment; and

26 (l) contain an attestation that the information provided in the written certification and

27 accompanying statements is true and correct.

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(3) A physician who is the second physician recommending marijuana for use by a minor shall submit:

(a) a statement initialed by the physician that the physician conducted a comprehensive review of the minor's medical records as maintained by the treating physician or referral physician;

(b) a statement that in the physician's professional opinion, the potential benefits of the use of marijuana would likely outweigh the health risks for the minor; and

(c) an attestation that the information provided in the written certification and accompanying statements is true and correct.

(4) A physician who is providing written certification through the use of telemedicine:

(a) shall comply with the administrative rules adopted for telemedicine by the board of medical examiners provided for in 2-15-1731; and

(b) may not use an audio-only visit unless the physician has first established a physician-patient relationship through an in-person encounter.

(5) If the written certification states that marijuana should be used for less than 1 year, the department shall issue a registry identification card that is valid for the period specified in the written certification.

(6) The department shall provide the board of medical examiners with the name of any physician who provides a written certification for 39 or more patients within any given calendar year. The board of medical examiners shall review the physician's practices in order to determine whether the practices meet the standard of care. The physician whose practices are under review shall pay the costs of the board's review activities."

NEW SECTION. Section 4. Appropriation. There is appropriated \$1,000 from the state special revenue fund under 16-12-111 to the department of revenue for the biennium ending June 30, 2023, for the purposes of notification to licensees of the provisions of [this act].

NEW SECTION. Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

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2 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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AMENDED