

1 HOUSE BILL NO. 907
2 INTRODUCED BY J. HINKLE, M. BERTOGLIO, C. SPRUNGER
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MARIJUANA LAWS; REVISING LAWS
5 RELATED TO MARIJUANA TESTING PROCEDURES; REVISING LAWS RELATED TO WASTEWATER FOR
6 MARIJUANA CULTIVATORS; REQUIRING MARIJUANA TESTING LABORATORIES TO TEST FOR THE
7 PRESENCE OF FENTANYL AND METHAMPHETAMINE IN MARIJUANA AND MARIJUANA PRODUCTS;
8 REQUIRING MARIJUANA TESTING LABORATORIES TO REPORT THE PRESENCE OF FENTANYL AND
9 METHAMPHETAMINE TO THE DEPARTMENT OF REVENUE AND THE ECONOMIC AFFAIRS INTERIM
10 COMMITTEE; REQUIRING THE DEPARTMENT OF REVENUE TO REPORT THE POTENTIAL
11 CONTAMINATION OF A WATER SYSTEM BY A CULTIVATOR TO A LOCAL HEALTH BOARD AND THE
12 DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN
13 APPROPRIATION; AMENDING SECTIONS 16-12-202, 16-12-203, 16-12-206, 16-12-209, 16-12-210, AND 50-
14 2-116, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 **Section 1.** Section 16-12-202, MCA, is amended to read:
19 **"16-12-202. Testing laboratories -- licensing -- inspection -- state laboratory responsibility. (1)**

20 (a) A person who obtains a testing laboratory license or is an employee of a licensed testing laboratory is
21 authorized to possess and test marijuana as allowed by this chapter.

22 (b) A person who is a controlling beneficial owner of a testing laboratory or holds a financial
23 interest in a licensed testing laboratory may not be a controlling beneficial owner or have a financial interest in
24 any entity involved in the cultivation, manufacture, or sale of marijuana or marijuana products for whom testing
25 services are performed.

26 (2) (a) The state laboratory shall endorse a testing laboratory to perform the testing required under
27 16-12-206 and 16-12-209 before a testing laboratory may apply for licensure or renewal with the department.

28 (b) (i) The state laboratory shall inspect a testing laboratory before endorsing a testing laboratory

1 ensure that the testing laboratories are providing consistent and uniform results.

2 (6) The department may retain the services of the analytical laboratory provided by the department
3 of agriculture pursuant to 80-1-104 for the testing contemplated in this section.

4 (7) If an analysis of raw testing data indicates that licensees are providing test results that vary
5 among testing laboratories by an amount determined by the state laboratory by rule, the department shall
6 investigate the inconsistent results and determine within 60 days the steps the testing laboratories must take to
7 ensure that each testing laboratory provides accurate and consistent results.

8 (8) If the analysis of raw testing data indicates a testing laboratory may be providing inconsistent
9 results, the state laboratory may suspend the testing laboratory's license. A suspension must be based on rules
10 adopted by the state laboratory.

11 (9) The department shall revoke a testing laboratory's license upon a determination that the
12 laboratory is:

13 (a) providing test results that are fraudulent or misleading; or

14 (b) providing test results without having:

15 (i) the equipment needed to test marijuana, marijuana concentrates, or marijuana products; or

16 (ii) the equipment required under this chapter to conduct the tests for which the laboratory is
17 providing results.

18 (10) A revocation under this section is subject to judicial review.

19 (11) The state laboratory shall prepare an annual report on testing results under subsection (5)(b)
20 and shall send the report to the economic affairs interim committee as provided in 5-11-210 by June 30 of each
21 year, beginning in 2024."

23 **Section 2.** Section 16-12-203, MCA, is amended to read:

24 **"16-12-203. Licensing types -- requirements -- limitations -- activities.** (1) (a) Subject to
25 subsection (3) and this subsection (1), the department shall issue a license to or renew a license for a person
26 who is applying to be a cultivator, manufacturer, medical marijuana dispensary, adult-use dispensary, or testing
27 laboratory if the person submits to the department:

28 (i) the person's name, date of birth, and street address on a form prescribed by the department;

- 1 (ii) proof that the natural person having day-to-day operational control over the business is a
- 2 Montana resident;
- 3 (iii) a statement, on a form prescribed by the department, that the person:
- 4 (A) will not divert to any other person the marijuana that the person cultivates or the marijuana
- 5 products that the person manufactures for consumers or registered cardholders, unless the marijuana or
- 6 marijuana products are sold to another licensee as part of a sale of a business as allowed under this section;
- 7 and
- 8 (B) has no pending citations for violations occurring under this chapter or the marijuana laws of any
- 9 other state or jurisdiction;
- 10 (iv) the street address of the location at which marijuana, marijuana concentrates, or marijuana
- 11 products will be cultivated, manufactured, sold, or tested; and
- 12 (v) proof that the applicant has source of funding from a suitable source. A lender or other source
- 13 of money or credit may be found unsuitable if the source:
- 14 (A) is a person whose prior financial or other activities or criminal record:
- 15 (B) poses a threat to the public interest of the state;
- 16 (C) poses a threat to the effective regulation and control of marijuana and marijuana products; or
- 17 (D) creates a danger of illegal practices, methods, or activities in the conduct of the licensed
- 18 business.
- 19 (b) If the person to be licensed consists of more than one individual, the names of all owners must
- 20 be submitted along with the fingerprints and date of birth of each owner having at least a 5% controlling
- 21 beneficial ownership interest.
- 22 (c) Nonindividuals who apply for the issuance of a marijuana business license shall disclose to the
- 23 department the following:
- 24 (i) a complete and accurate organizational chart of the marijuana business disclosing the identity
- 25 and ownership percentages of its controlling beneficial owners;
- 26 (ii) whether the applicant has ever filed for bankruptcy;
- 27 (iii) whether the applicant has ever been a party to a lawsuit, either as a plaintiff or defendant;
- 28 (iv) any financial interests held by the applicant in another marijuana business in any state;

1 (v) if the controlling beneficial owner is a publicly traded corporation, the controlling beneficial
2 owners' managers and any beneficial owners that directly or indirectly beneficially own 5% or more of the
3 owner's interest in the controlling beneficial owner;

4 (vi) if the controlling beneficial owner is not a publicly traded corporation, the controlling beneficial
5 owner's managers and any beneficial owners that directly or indirectly beneficially own 5% or more of the
6 owner's interest in the controlling beneficial owner;

7 (vii) if the controlling beneficial owner is a natural person, the natural person's identifying
8 information;

9 (viii) a person that is both a passive beneficial owner and a financial interest holder in the marijuana
10 business; and

11 (ix) any financial interest holder that holds two or more financial interests in the marijuana business
12 or that is contributing over 50% of the operating capital of the marijuana business.

13 (d) The department may request that the marijuana business disclose each beneficial owner and
14 affiliate of an applicant or marijuana business or each controlling beneficial owner that is not a publicly traded
15 corporation.

16 (e) An applicant or marijuana business that is not a publicly traded corporation shall affirm under
17 penalty of perjury that it exercised reasonable care to confirm that its passive beneficial owners, financial
18 interest holders, and qualified institutional investors are not persons prohibited pursuant to this section or
19 otherwise restricted from holding an interest under this chapter. An applicant's or marijuana business's failure to
20 exercise reasonable care is a basis for denial, fine, suspension, revocation, or other sanction by the
21 department.

22 (f) An applicant or marijuana business that is a publicly traded corporation shall affirm under
23 penalty of perjury that it exercised reasonable care to confirm that its passive beneficial owners, financial
24 interest holders, and qualified institutional investors are not persons prohibited pursuant to this section, or
25 otherwise restricted from holding an interest under this chapter. An applicant's or marijuana business's failure to
26 exercise reasonable care is a basis for denial, fine, suspension, revocation, or other sanction by the
27 department.

28 (g) This section does not restrict the department's ability to reasonably request information or

1 records at renewal or as part of any other investigation following initial licensure of a marijuana business.

2 (2) The department may not license a person under this chapter if the person or an owner,
3 including a person with a financial interest:

4 (a) has a felony conviction or a conviction for a drug offense, including but not limited to, a
5 conviction for a violation of any marijuana law in any other state within the past 5 years and, after an
6 investigation, the department finds that the applicant has not been sufficiently rehabilitated as to warrant the
7 public trust;

8 (b) is in the custody of or under the supervision of the department of corrections or a youth court;

9 (c) has been convicted of a violation under 16-12-524 or of making a fraudulent representation
10 under the former medical marijuana program administered by the department of public health and human
11 services;

12 (d) is under 21 years of age;

13 (e) has failed to:

14 (i) pay any taxes, interest, penalties, or judgments due to a government agency;

15 (ii) comply with any provisions of Title 15 or Title 16, including the failure to file any tax return or
16 report;

17 (iii) stay out of default on a government-issued student loan;

18 (iv) pay child support; or

19 (v) remedy an outstanding delinquency for child support or for taxes or judgments owed to a
20 government agency;

21 (f) has had a license issued under this chapter or a former medical marijuana license revoked
22 within 3 years of the date of the application; or

23 (g) has resided in Montana for less than 1 year.

24 (3) Marijuana for use pursuant to this chapter must be cultivated and manufactured in Montana
25 unless federal law otherwise allows for the interstate distribution of marijuana.

26 (4) Except as provided in 16-12-209, a cultivator, manufacturer, medical marijuana dispensary, or
27 adult-use dispensary shall:

28 (a) prior to selling marijuana or marijuana products, submit samples to a testing laboratory

1 pursuant to this chapter and administrative rules;

2 (b) allow the department to collect samples of marijuana or marijuana products during inspections

3 of licensed premises for testing as provided by the department by rule; and

4 (c) participate as required by the department by rule in a seed-to-sale tracking system established

5 by the department pursuant to 16-12-105.

6 (5) (a) A person licensed under this section may cultivate marijuana and manufacture marijuana

7 products for use by consumers or registered cardholders only at one of the following locations:

8 (i) a property that is owned by the licensee; or

9 (ii) with written permission of the property owner filed with the department when applying for or

10 renewing a license, a property that is rented or leased by the licensee.

11 (b) No portion of the property used for cultivation of marijuana or manufacture of marijuana

12 products or marijuana concentrate may be shared with or rented or leased to another licensee.

13 (c) Marijuana or marijuana products may not be consumed on the premises of any licensed

14 premises.

15 (6) A cultivator licensed under this chapter in accordance with licensing requirements set forth in

16 this chapter and rules adopted by the department:

17 (a) may operate adult-use dispensaries;

18 (b) may engage in manufacturing; and

19 (c) may not engage in outdoor cultivation of marijuana, except as provided in 16-12-223(6).

20 (7) A cultivator or manufacturer:

21 (a) may contract or otherwise arrange for another party that is licensed to process a cultivator's or

22 manufacturer's marijuana into marijuana products and return the marijuana products to the cultivator or

23 manufacturer for sale; ~~and~~

24 (b) except as allowed pursuant to 16-12-207, may not open a dispensary before obtaining the

25 required license and before the department has completed the inspection required under this chapter unless

26 permitted to do so pursuant to 16-12-207; and

27 (c) shall submit written approval by a local health board under 50-2-116 of the proposed

28 wastewater treatment system prior to licensure."

1 a finding that presents an immediate threat to the health, safety, or welfare of consumers, employees of the
2 licensee, or members of the public. The department may establish by rule the applicable procedures for
3 securing or disposing of the inventory in such circumstances.

4 (8) (a) Review of a department action imposing a suspension, revocation, or other modification
5 under this chapter must be conducted as a contested case hearing before the department's office of dispute
6 resolution under the provisions of the Montana Administrative Procedure Act.

7 (b) A person may appeal any decision of the department of revenue concerning the issuance,
8 rejection, suspension, or revocation of a license provided for by this chapter to the district court in the county in
9 which the person operates or proposes to operate. If a person operates or seeks to operate in more than one
10 county, the person may seek judicial review in the district court with jurisdiction over actions arising in any of the
11 counties where it operates or seeks to operate.

12 (c) An appeal pursuant to subsection (8)(b) must be made by filing a complaint setting forth the
13 grounds for relief and the nature of relief demanded with the district court within 30 days following receipt of
14 notice of the department's final decision.

15 (9) If the department receives a complaint from the public about a cultivator potentially
16 contaminating a water system or if a department inspection of a cultivator raises concerns of potential
17 contamination of a water system, the department shall share the complaint with or report to the local health
18 board under 50-2-116 and the department of environmental quality.

19 ~~(9)(10)~~ The department shall establish a training protocol to ensure uniform application and
20 enforcement of the requirements of this chapter.

21 ~~(40)(11)~~ The department shall report biennially to the economic affairs interim committee concerning
22 the results of inspections conducted under this section. The report must include the information required under
23 16-12-110."

24

25 **Section 6.** Section 50-2-116, MCA, is amended to read:

26 **"50-2-116. Powers and duties of local boards of health.** (1) Except as provided in subsection (5),
27 in order to carry out the purposes of the public health system, in collaboration with federal, state, and local
28 partners, each local board of health shall:

- 1 (a) recommend to the governing body the appointment of a local health officer who is:
- 2 (i) a physician;
- 3 (ii) a person with a master's degree in public health; or
- 4 (iii) a person with equivalent education and experience, as determined by the department;
- 5 (b) elect a presiding officer and other necessary officers;
- 6 (c) adopt bylaws to govern meetings;
- 7 (d) hold regular meetings at least quarterly and hold special meetings as necessary;
- 8 (e) identify, assess, prevent, and ameliorate conditions of public health importance through:
- 9 (i) epidemiological tracking and investigation;
- 10 (ii) screening and testing;
- 11 (iii) isolation and quarantine measures;
- 12 (iv) diagnosis, treatment, and case management;
- 13 (v) abatement of public health nuisances;
- 14 (vi) inspections;
- 15 (vii) collecting and maintaining health information;
- 16 (viii) education and training of health professionals; or
- 17 (ix) other public health measures as allowed by law;
- 18 (f) protect the public from the introduction and spread of communicable disease or other
- 19 conditions of public health importance, including through actions to ensure the removal of filth or other
- 20 contaminants that might cause disease or adversely affect public health;
- 21 (g) supervise or make inspections for conditions of public health importance and issue written
- 22 orders for compliance or for correction, destruction, or removal of the conditions;
- 23 (h) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the
- 24 violation of public health laws, rules, and local regulations;
- 25 (i) identify to the department an administrative liaison for public health. The liaison must be the
- 26 local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a
- 27 full-time local health officer, the liaison must be the highest ranking public health professional employed by the
- 28 jurisdiction.

1 (j) subject to the provisions of 50-2-130, propose for adoption by the local governing body
2 necessary regulations that are not less stringent than state standards for the control and disposal of sewage
3 from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter
4 4. The regulations must describe standards for granting variances from the minimum requirements that are
5 identical to standards promulgated by the department of environmental quality and must provide for appeal of
6 variance decisions to the department of environmental quality as required by 75-5-305. If the local board of
7 health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well
8 isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of
9 the private property owner.

10 (k) approve wastewater systems submitted by a marijuana cultivator or marijuana manufacturer
11 license applicant and provide written authorization to the department of revenue. A board may defer approval of
12 a public sewage system, as provided in 75-6-102, proposed by a marijuana cultivator or marijuana
13 manufacturer, to the department of environmental quality under Title 75, chapter 6.

14 (k)(l) respond to complaints made by the public or reports provided by the department of revenue
15 under 16-12-210 involving a marijuana cultivator's or marijuana manufacturer's potential contamination of water
16 systems and, as necessary, supervise, make inspections of, and issue written orders for compliance or
17 correction to the cultivator.

18 (2) Local boards of health may:

19 (a) accept and spend funds received from a federal agency, the state, a school district, or other
20 persons or entities;

21 (b) propose for adoption by the local governing body necessary fees to administer regulations for
22 the control and disposal of sewage from private and public buildings and facilities;

23 (c) propose for adoption by the local governing body regulations that do not conflict with 50-50-126
24 or rules adopted by the department:

25 (i) for the control of communicable diseases;

26 (ii) for the removal of filth that might cause disease or adversely affect public health;

27 (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities
28 that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent

1 directly into state water and that are not required to have an operating permit as required by rules adopted
2 under 75-5-401;

3 (iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing
4 establishments and that are not less stringent than state standards for tattooing and body-piercing
5 establishments;

6 (v) for the establishment of institutional controls that have been selected or approved by the:

7 (A) United States environmental protection agency as part of a remedy for a facility under the
8 federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et
9 seq.; or

10 (B) department of environmental quality as part of a remedy for a facility under the Montana
11 Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

12 (vi) to implement the public health laws;

13 (d) adopt rules necessary to implement and enforce regulations adopted by the local governing
14 body; and

15 (e) promote cooperation and formal collaborative agreements between the local board of health
16 and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting,
17 information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters
18 addressed in this title.

19 (3) A local board of health may provide, implement, facilitate, or encourage other public health
20 services and functions as considered reasonable and necessary.

21 (4) A directive, mandate, or order issued by a local board of health in response to a declaration of
22 emergency or disaster by the governor as allowed in [10-3-302 and] 10-3-303 or by the principal executive
23 officer of a political subdivision as allowed in 10-3-402 and 10-3-403:

24 (a) remains in effect only during the declared state of emergency or disaster or until the governing
25 body holds a public meeting and allows public comment and the majority of the governing body moves to
26 amend, rescind, or otherwise change the directive, mandate, or order; and

27 (b) may not interfere with or otherwise limit, modify, or abridge a person's physical attendance at or
28 operation of a religious facility, church, synagogue, or other place of worship.

1 (5) A regulation allowed in subsection (2)(c)(i), (2)(c)(ii), or (2)(c)(vi) adopted or a directive,
2 mandate, or order implemented to carry out the provisions of this part that applies to the entire jurisdictional
3 area of a town, city, or county under the jurisdiction of the local health board may not:

4 (a) compel a private business to deny a customer of the private business access to the premises
5 or access to goods or services;

6 (b) deny a customer of a private business the ability to access goods or services provided by the
7 private business; or

8 (c) include any of the following actions for noncompliance of actions described in subsections
9 (5)(a) and (5)(b):

10 (i) require the assessment of a fee or fine;

11 (ii) require the revocation of a license required for the operation of a private business;

12 (iii) find a private business owner guilty of a misdemeanor; or

13 (iv) bring any other retributive action against a private business owner, including but not limited to
14 an action allowed under 50-2-123, a penalty allowed under 50-2-124, or any other criminal charge.

15 (6) The prohibition provided for in subsection (5)(b) does not apply to persons confirmed to have a
16 communicable disease and who are currently under a public isolation order.

17 (7) The prohibitions provided for in subsection (5) do not restrict a local board of health from
18 exercising its authority under this section to enforce and ensure compliance by private businesses with all
19 lawfully adopted regulations, directives, and orders.

20 (8) As used in this section, "private business" means an individual or entity that is not principally a
21 part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit
22 entity, a corporation, a sole proprietorship, or a limited liability company."
23

24 **NEW SECTION. Section 7. Transfer of funds.** No later than June 30, 2023, the state treasurer shall
25 transfer \$42,000 from the state special revenue account provided for in 16-12-111 to the state laboratory within
26 the department of public health and human services.

27
28 **NEW SECTION. Section 8. Appropriation.** (1) There is appropriated \$42,000 from the state special

1 revenue account provided for in 16-12-111 to the state laboratory within the department of public health and
2 human services for the biennium beginning July 1, 2023.

3 (2) The appropriation must be used to pay for 0.5 FTE for additional testing and rulemaking duties
4 associated with [sections ~~1 through 3~~ 1, 3, and 4].

5
6 **NEW SECTION. Section 9. Effective dates.** (1) Except as provided in subsections (2) and (3), [this
7 act] is effective October 1, 2023.

8 (2) [Section ~~78~~] is effective July 1, 2023.

9 (3) [Section ~~67~~] and this section are effective on passage and approval.

10
11 **NEW SECTION. Section 10. Termination.** [Sections ~~1 through 3~~ 1, 3, and 4] terminate September
12 30, 2026.

13 - END -