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HOUSE BILL NO. 907

INTRODUCED BY J. HINKLE, M. BERTOGLIO, C. SPRUNGER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MARIJUANA LAWS; REVISING LAWS RELATED TO MARIJUANA TESTING PROCEDURES; REVISING LAWS RELATED TO WASTEWATER FOR MARIJUANA CULTIVATORS; ~~REQUIRING MARIJUANA TESTING LABORATORIES~~ ALLOWING THE DEPARTMENT OF AGRICULTURE TO TEST FOR THE PRESENCE OF FENTANYL AND METHAMPHETAMINE IN MARIJUANA AND MARIJUANA PRODUCTS; ~~REQUIRING MARIJUANA TESTING LABORATORIES TO REPORT THE PRESENCE OF FENTANYL AND METHAMPHETAMINE TO THE DEPARTMENT OF REVENUE AND THE ECONOMIC AFFAIRS INTERIM COMMITTEE;~~ REQUIRING THE DEPARTMENT OF REVENUE TO REPORT THE POTENTIAL CONTAMINATION OF A WATER SYSTEM BY A CULTIVATOR TO A LOCAL HEALTH BOARD AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS ~~16-12-202, 16-12-206, 16-12-209,~~ 16-12-210, ~~AND 50-2-116,~~ AND 80-1-104, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE."

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

Section 1. Section ~~16-12-202~~, MCA, is amended to read:

~~"16-12-202. Testing laboratories — licensing — inspection — state laboratory responsibility. (1)~~

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

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

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

~~(b) — (i) The state laboratory shall inspect a testing laboratory before endorsing a testing laboratory for licensure or renewal and may not endorse a testing laboratory for licensure or renewal if the applicant does not meet the requirements of 16-12-206 and this section.~~

~~(ii) — The state laboratory may not issue a temporary license while an inspection is pending.~~

~~(3) — An inspection conducted for licensure or renewal of a license must include a review of an applicant's or testing laboratory's:~~

~~(a) — physical premises where testing will be conducted;~~

~~(b) — instrumentation;~~

~~(c) — protocols for sampling, handling, testing, reporting, security and storage, and waste disposal;~~

~~(d) — raw data on tests conducted by the laboratory, if the inspection is for renewal of a license; and~~

~~(e) — vehicles used for transporting marijuana or marijuana product samples for testing purposes.~~

~~(4) — Upon receiving an endorsement from the state laboratory for licensure or annual renewal, a testing laboratory must apply for licensure or renewal with the department by submitting to the department:~~

~~(a) — the information required by 16-12-203; and~~

~~(b) — a fee that the department shall establish by rule.~~

~~(5) — The state laboratory shall:~~

~~(a) — measure the tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic acid content of marijuana and marijuana products;~~

~~(b) — test marijuana and marijuana products for the presence of fentanyl and methamphetamine;~~

~~(b)(c) — test marijuana and marijuana products for pesticides, solvents, moisture levels, mold, mildew, and other contaminants; and~~

~~(c)(d) — establish and enforce standard operating procedures and testing standards for testing laboratories to ensure that consumers and registered cardholders receive consistent and uniform information about the potency and quality of the marijuana and marijuana products they receive. The state laboratory shall:~~

~~(i) — consult with independent national or international organizations that establish testing standards for marijuana and marijuana products;~~

~~(ii) — require testing laboratories to follow uniform standards and protocols for the samples accepted for testing and the processes used for testing the samples; and~~

1 (iii) — track and analyze the raw data for the results of testing conducted by testing laboratories to
2 ensure that the testing laboratories are providing consistent and uniform results.

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

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

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

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

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

15 (b) — providing test results without having:

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

17 (ii) — the equipment required under this chapter to conduct the tests for which the laboratory is

18 providing results.

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

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

23
24 **Section 2.** Section 16-12-206, MCA, is amended to read:

25 **"16-12-206. — Testing laboratories -- licensing inspections.** (1) A testing laboratory may shall:

26 (a) — measure the tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, and cannabidiolic
27 acid content of marijuana and marijuana products; and

28 (b) — test marijuana and marijuana products for the presence of fentanyl and methamphetamine; and

1 ~~(b)(c) — test marijuana and marijuana products for pesticides, solvents, moisture levels, mold, mildew,~~
2 ~~and other contaminants. A testing laboratory may transport samples to be tested.~~

3 ~~(2) — A licensed testing laboratory shall employ a scientific director who is responsible for ensuring~~
4 ~~the achievement and maintenance of quality standards of practice. A scientific director must have the following~~
5 ~~minimum qualifications:~~

6 ~~(a) — a doctorate in chemical or biological sciences from a college or university accredited by a~~
7 ~~national or regional certifying authority and a minimum of 2 years of postdegree laboratory experience; or~~

8 ~~(b) — a master's degree in chemical or biological sciences from a college or university accredited by~~
9 ~~a national or regional certifying authority and a minimum of 4 years of postdegree laboratory experience.~~

10 ~~(3) — All owners and employees of a testing laboratory shall submit fingerprints to the department to~~
11 ~~facilitate a fingerprint and background check as set forth in 16-12-129. A testing laboratory may not be owned,~~
12 ~~operated, or staffed by a person who has been convicted of a felony offense.~~

13 ~~(4) — To qualify for licensure, a testing laboratory shall demonstrate that:~~

14 ~~(a) — staff members are proficient in operation of the laboratory equipment; and~~

15 ~~(b) — the laboratory:~~

16 ~~(i) — maintains the equipment and instrumentation required by rule;~~

17 ~~(ii) — has all equipment and instrumentation necessary to certify results that meet the quality~~
18 ~~assurance testing requirements established by rule, including the ability to certify results at the required level of~~
19 ~~sensitivity;~~

20 ~~(iii) — meets insurance and bonding requirements established by rule;~~

21 ~~(iv) — has the capacity and ability to serve rural areas of the state; and~~

22 ~~(v) — has passed a proficiency program approved by the state laboratory that demonstrates it is able~~
23 ~~to meet all testing requirements.~~

24 ~~(5) — Except as provided in 16-12-209, a testing laboratory shall conduct tests of:~~

25 ~~(a) — samples of marijuana and marijuana products submitted by cultivators and manufacturers~~
26 ~~pursuant to 16-12-209 and related administrative rules prior to sale of the marijuana or marijuana products;~~

27 ~~(b) — samples of marijuana or marijuana products collected by the department during inspections of~~
28 ~~licensed premises; and~~

1 ~~(c) — samples submitted by consumers or registered cardholders.~~

2 ~~(6) — (a) A testing laboratory shall prepare an annual report regarding the amount of marijuana and~~
3 ~~marijuana products tested under subsection (5) that tested positive for the presence of fentanyl or~~
4 ~~methamphetamine and submit the report to the department by June 1 of each year, beginning in 2024.~~

5 ~~(b) — The department shall provide any report submitted to the department by a testing laboratory~~
6 ~~under subsection (6)(a) to the economic affairs interim committee as provided in 5-11-210 by June 30 of each~~
7 ~~year, beginning in 2024."~~

8
9 **Section 3.** Section 16-12-209, MCA, is amended to read:

10 ~~"16-12-209. — Testing of marijuana and marijuana products. (1) A cultivator, manufacturer, adult use~~
11 ~~dispensary, or medical marijuana dispensary may not sell marijuana or marijuana products until the marijuana~~
12 ~~or marijuana products have been tested by a testing laboratory and meet the requirements of this section. The~~
13 ~~licensee shall pay for the testing.~~

14 ~~(2) — A licensee shall submit material that has been collected in accordance with a sampling protocol~~
15 ~~established by the state laboratory by rule. The protocol must address the division of marijuana and marijuana~~
16 ~~products into batch sizes for testing.~~

17 ~~(3) — The state laboratory shall adopt rules regarding the types of tests that must be performed to~~
18 ~~ensure product safety and consumer protection. Rules must include but are not limited to testing for:~~

19 ~~(a) — the potency of the cannabinoids present; and~~

20 ~~(b) — the presence of fentanyl and methamphetamine; and~~

21 ~~(b)(c) — the presence of contaminants.~~

22 ~~(4) — The testing laboratory shall conduct a visual inspection of each batch to determine the~~
23 ~~presence of levels of foreign matter, debris, insects, and visible mold.~~

24 ~~(5) — The state laboratory shall establish by rule the acceptable levels of moisture, pesticides,~~
25 ~~residual solvents, mold, mildew, foreign matter, debris, insects, and other contaminants that marijuana products~~
26 ~~may contain. The rules must provide that no amount of fentanyl or methamphetamine is acceptable.~~

27 ~~(6) — The testing laboratory shall:~~

28 ~~(a) — issue a certificate of analysis certifying the test results; and~~

~~(b) — report the results to the seed-to-sale tracking system established pursuant to 16-12-105.~~

~~(7) — A licensee may request that material that has failed to pass the required tests be retested in accordance with the rules adopted by the state laboratory providing for retesting parameters and requirements.~~

~~(8) — Marijuana or a marijuana product must include a label indicating that the marijuana or marijuana product has been tested.~~

~~(9) — (a) The department shall collect and, except as provided in subsection (9)(b), destroy samples of marijuana and marijuana products that fail to meet the acceptable levels to ensure product safety and consumer protection.~~

~~(b) — If a sample fails due to THC levels in excess of the allowable limit and is not deficient in any other respect, the department may dispose of the sample by means other than destruction in accordance with rule.~~

~~(c) — The department may contract for the duties under this subsection (9)."~~

Section 1. Section 16-12-210, MCA, is amended to read:

"16-12-210. Inspections -- procedures -- prohibition on inspector affiliation with licensees. (1)

(a) The department shall conduct unannounced inspections of licensed premises.

(b) The department may not conduct more than two unannounced inspections of a licensed premises per year unless a citation has been issued to a licensee at the premises within the last 2 years or there is other just and reasonable cause.

(2) (a) The department shall inspect annually each premises operated by a licensee.

(b) The department may collect samples during the inspection of a licensed premises and submit the samples to a testing laboratory or the state laboratory for testing as provided by the department by rule.

(c) The department shall send a portion of the samples collected under subsections (1)(a) and (2)(b) to the department of agriculture for testing for the presence of fentanyl and methamphetamine, as provided in 80-1-104. The department may establish the percentage of samples required under this subsection (2)(c) by rule.

(d) The department of agriculture shall report the results of testing under subsection (2)(c) to the department. The department shall provide any report submitted to the department by the department of

1 agriculture under this subsection (2)(d) to the economic affairs interim committee in accordance with 5-11-210
2 by June 30 of each year, beginning in 2024.

3 (3) (a) Each licensee shall keep a complete set of records necessary to show all transactions with
4 consumers and registered cardholders. The records must be open for inspection by the department or state
5 laboratory, as appropriate, and state or local law enforcement agencies.

6 (b) Each testing laboratory shall keep:

7 (i) a complete set of records necessary to show all transactions with a licensee; and

8 (ii) all data, including instrument raw data, pertaining to the testing of marijuana and marijuana
9 products.

10 (c) The records and data required under this subsection (4) must be open for inspection by the
11 department and state or local law enforcement agencies.

12 (d) The department may require a licensee to furnish information that the department considers
13 necessary for the proper administration of this chapter.

14 (4) (a) Each licensed premises, including any places of storage, where marijuana is cultivated,
15 manufactured, sold, stored, or tested are subject to entry by the department or state or local law enforcement
16 agencies for the purpose of inspection or investigation.

17 (b) If any part of a licensed premises consists of a locked area, the licensee shall make the area
18 available for inspection immediately upon request of the department or state or local law enforcement officials.

19 (5) The department may not hire or contract with a person to be an inspector if the person, during
20 the previous 4 years, was or worked for a Montana business or facility operating under this chapter or a former
21 medical marijuana licensee.

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

26 (a) a cause for which issuance of the license or endorsement could have been rejected had it been
27 known to the department at the time of issuance;

28 (b) a violation of an administrative rule adopted to carry out the provisions of this chapter; or

1 (c) noncompliance with any provision of this chapter.

2 (7) The department may suspend or modify a license or endorsement without advance notice upon
3 a finding that presents an immediate threat to the health, safety, or welfare of consumers, employees of the
4 licensee, or members of the public. The department may establish by rule the applicable procedures for
5 securing or disposing of the inventory in such circumstances.

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

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

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

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

21 ~~(9)(10)~~ The department shall establish a training protocol to ensure uniform application and
22 enforcement of the requirements of this chapter.

23 ~~(10)(11)~~ The department shall report biennially to the economic affairs interim committee concerning
24 the results of inspections conducted under this section. The report must include the information required under
25 16-12-110."
26

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

28 **"50-2-116. Powers and duties of local boards of health.** (1) Except as provided in subsection (5),

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

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

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

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

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

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

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

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

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

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

20

21 **Section 3.** Section 80-1-104, MCA, is amended to read:

22 **"80-1-104. Analytical laboratory services -- rulemaking authority -- deposit of fees.** (1) The
23 department is authorized to provide analytical laboratory services for:

24 (a) programs it operates under this title;

25 (b) other state or federal agencies;

26 (c) the department of revenue for the purposes of Title 16, chapter 12, including testing marijuana
27 for the presence of fentanyl and methamphetamine under 16-12-210, as allowed by federal law; and

28 (d) private parties.

1 (2) The department may enter into a contract or a memorandum of understanding for the space
2 and equipment necessary for operation of the analytical laboratory.

3 (3) (a) The department may adopt rules establishing fees for testing services required under this
4 title or provided to another state agency, a federal agency, or a private party.

5 (b) Money collected from the fees must be deposited in the appropriate related account in the state
6 special revenue fund to the credit of the department to pay costs related to analytical laboratory services
7 provided pursuant to this section."

8
9 NEW SECTION. Section 4. Transfer of funds. No later than June 30, 2023, the state treasurer shall
10 transfer ~~\$42,000~~ \$84,000 from the state special revenue account provided for in 16-12-111 to the ~~state~~
11 ~~laboratory within the department of public health and human services~~ department of agriculture.

12
13 NEW SECTION. Section 5. Appropriation. (1) There is appropriated ~~\$42,000~~ \$84,000 from the state
14 special revenue account provided for in 16-12-111 to the ~~state laboratory within the department of public health~~
15 ~~and human services~~ department of agriculture for the biennium beginning July 1, 2023.

16 (2) The appropriation must be used to pay for ~~0.51~~ 1 FTE for additional testing ~~and rulemaking~~
17 duties associated with [sections 1 ~~through and~~ 3].

18 (3) The appropriation must be used for the purposes of testing as provided in [this act]. The
19 legislature intends that the appropriation be considered part of the ongoing base for the next legislative session.

20
21 NEW SECTION. Section 6. Effective dates. (1) Except as provided in subsections (2) and (3), [this
22 act] is effective October 1, 2023.

23 (2) [Section ~~75~~ 75] is effective July 1, 2023.

24 (3) [Section ~~64~~ 64] and this section are effective on passage and approval.

25
26 NEW SECTION. Section 7. Termination. ~~[Sections 1 through 3]~~ ~~[Section 1(2)(c) and (2)(d)]~~ ~~and~~
27 ~~[section 3]~~ terminate September 30, 2026.

28 - END -