

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 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, 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

1 for licensure or renewal and may not endorse a testing laboratory for licensure or renewal if the applicant does
2 not meet the requirements of 16-12-206 and this section.

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

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

6 (a) physical premises where testing will be conducted;

7 (b) instrumentation;

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

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

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

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

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

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

15 (5) The state laboratory shall:

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

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

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

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

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

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

28 (iii) track and analyze the raw data for the results of testing conducted by testing laboratories to

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."

22

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

24 "**16-12-206. Testing laboratories -- licensing inspections.** (1) A testing laboratory ~~may~~ shall:

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

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

28 ~~(b)(c)~~ (c) test marijuana and marijuana products for pesticides, solvents, moisture levels, mold, mildew,

1 and other contaminants. A testing laboratory may transport samples to be tested.

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

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

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

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

12 (4) To qualify for licensure, a testing laboratory shall demonstrate that:

13 (a) staff members are proficient in operation of the laboratory equipment; and

14 (b) the laboratory:

15 (i) maintains the equipment and instrumentation required by rule;

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

19 (iii) meets insurance and bonding requirements established by rule;

20 (iv) has the capacity and ability to serve rural areas of the state; and

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

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

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

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

28 (c) samples submitted by consumers or registered cardholders.

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

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

7

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

9 **"16-12-209. Testing of marijuana and marijuana products.** (1) A cultivator, manufacturer, adult-use
 10 dispensary, or medical marijuana dispensary may not sell marijuana or marijuana products until the marijuana
 11 or marijuana products have been tested by a testing laboratory and meet the requirements of this section. The
 12 licensee shall pay for the testing.

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

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

- 18 (a) the potency of the cannabinoids present; ~~and~~
- 19 (b) the presence of fentanyl and methamphetamine; and
- 20 ~~(b)~~(c) the presence of contaminants.

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

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

26 (6) The testing laboratory shall:

- 27 (a) issue a certificate of analysis certifying the test results; and
- 28 (b) report the results to the seed-to-sale tracking system established pursuant to 16-12-105.

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

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

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

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

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

12

13 **Section 4.** Section 16-12-210, MCA, is amended to read:

14 **"16-12-210. Inspections -- procedures -- prohibition on inspector affiliation with licensees. (1)**

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

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

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

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

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

25 (b) Each testing laboratory shall keep:

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

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

1 (c) The records and data required under this subsection (3) must be open for inspection by the
2 department and state or local law enforcement agencies.

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

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

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

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

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

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

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

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

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

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

28 (b) A person may appeal any decision of the department of revenue concerning the issuance,

1 rejection, suspension, or revocation of a license provided for by this chapter to the district court in the county in
 2 which the person operates or proposes to operate. If a person operates or seeks to operate in more than one
 3 county, the person may seek judicial review in the district court with jurisdiction over actions arising in any of the
 4 counties where it operates or seeks to operate.

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

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

12 ~~(9)(10)~~ The department shall establish a training protocol to ensure uniform application and
 13 enforcement of the requirements of this chapter.

14 ~~(40)(11)~~ The department shall report biennially to the economic affairs interim committee concerning
 15 the results of inspections conducted under this section. The report must include the information required under
 16 16-12-110."

17

18 **Section 5.** Section 50-2-116, MCA, is amended to read:

19 **"50-2-116. Powers and duties of local boards of health.** (1) Except as provided in subsection (5),
 20 in order to carry out the purposes of the public health system, in collaboration with federal, state, and local
 21 partners, each local board of health shall:

- 22 (a) recommend to the governing body the appointment of a local health officer who is:
- 23 (i) a physician;
- 24 (ii) a person with a master's degree in public health; or
- 25 (iii) a person with equivalent education and experience, as determined by the department;
- 26 (b) elect a presiding officer and other necessary officers;
- 27 (c) adopt bylaws to govern meetings;
- 28 (d) hold regular meetings at least quarterly and hold special meetings as necessary;

- 1 (e) identify, assess, prevent, and ameliorate conditions of public health importance through:
- 2 (i) epidemiological tracking and investigation;
- 3 (ii) screening and testing;
- 4 (iii) isolation and quarantine measures;
- 5 (iv) diagnosis, treatment, and case management;
- 6 (v) abatement of public health nuisances;
- 7 (vi) inspections;
- 8 (vii) collecting and maintaining health information;
- 9 (viii) education and training of health professionals; or
- 10 (ix) other public health measures as allowed by law;
- 11 (f) protect the public from the introduction and spread of communicable disease or other
- 12 conditions of public health importance, including through actions to ensure the removal of filth or other
- 13 contaminants that might cause disease or adversely affect public health;
- 14 (g) supervise or make inspections for conditions of public health importance and issue written
- 15 orders for compliance or for correction, destruction, or removal of the conditions;
- 16 (h) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the
- 17 violation of public health laws, rules, and local regulations;
- 18 (i) identify to the department an administrative liaison for public health. The liaison must be the
- 19 local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a
- 20 full-time local health officer, the liaison must be the highest ranking public health professional employed by the
- 21 jurisdiction.
- 22 (j) subject to the provisions of 50-2-130, propose for adoption by the local governing body
- 23 necessary regulations that are not less stringent than state standards for the control and disposal of sewage
- 24 from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter
- 25 4. The regulations must describe standards for granting variances from the minimum requirements that are
- 26 identical to standards promulgated by the department of environmental quality and must provide for appeal of
- 27 variance decisions to the department of environmental quality as required by 75-5-305. If the local board of
- 28 health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well

1 isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of
2 the private property owner.

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

6 (2) Local boards of health may:

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

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

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

13 (i) for the control of communicable diseases;

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

15 (iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities
16 that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent
17 directly into state water and that are not required to have an operating permit as required by rules adopted
18 under 75-5-401;

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

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

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

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

28 (vi) to implement the public health laws;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (8) As used in this section, "private business" means an individual or entity that is not principally a
9 part of or associated with a government unit. The term includes but is not limited to a nonprofit or for-profit
10 entity, a corporation, a sole proprietorship, or a limited liability company."
11

12 **NEW SECTION. Section 6. Transfer of funds.** No later than June 30, 2023, the state treasurer shall
13 transfer \$42,000 from the state special revenue account provided for in 16-12-111 to the state laboratory within
14 the department of public health and human services.
15

16 **NEW SECTION. Section 7. Appropriation.** (1) There is appropriated \$42,000 from the state special
17 revenue account provided for in 16-12-111 to the state laboratory within the department of public health and
18 human services for the biennium beginning July 1, 2023.

19 (2) The appropriation must be used to pay for 0.5 FTE for additional testing and rulemaking duties
20 associated with [sections 1 through 3].
21

22 **NEW SECTION. Section 8. Effective dates.** (1) Except as provided in subsections (2) and (3), [this
23 act] is effective October 1, 2023.

24 (2) [Section 7] is effective July 1, 2023.

25 (3) [Section 6] and this section are effective on passage and approval.
26

27 **NEW SECTION. Section 9. Termination.** [Sections 1 through 3] terminate September 30, 2026.
28

- END -