

HOUSE BILL NO. 298

INTRODUCED BY J. HINKLE, W. GALT, M. BERTOGLIO, J. SCHILLINGER, K. ZOLNIKOV, L. DEMING, J.

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LOCAL ELECTION LAWS ON APPROVAL OR DISAPPROVAL OF MARIJUANA BUSINESSES TO PROVIDE THAT A MUNICIPAL ELECTION TO APPROVE OR DISAPPROVE A MARIJUANA BUSINESS MAY ONLY BE HELD IN A MUNICIPALITY WITH A CERTAIN POPULATION; AMENDING SECTION 16-12-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 16-12-301, MCA, is amended to read:

**"16-12-301. Local government authority to regulate -- opt-in requirement in certain counties -- exemption for existing licensees.** (1) (a) Except as provided in subsection (1)(b), a marijuana business may not operate in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election until:

(i) the category or categories of license that the marijuana business seeks has or have been approved by the local jurisdiction where the marijuana business intends to operate as provided in subsection (3) or (4); and

(ii) the business is licensed by the department pursuant to this chapter.

(b) A former medical marijuana licensee that does not apply for licensure as an adult-use dispensary may operate in its existing premises in compliance with rules adopted by the department pursuant to 16-12-201(2) notwithstanding a local jurisdiction's failure to take action pursuant to subsections (3) through (6).

(c) A former medical marijuana licensee that intends to apply for licensure as a cultivator, manufacturer, adult-use dispensary, or testing laboratory may operate in compliance with rules adopted by the department pursuant to 16-12-201(2) notwithstanding a local jurisdiction's failure to take action pursuant to

1 subsections (3) through (6), provided that the former marijuana licensee has remained in good standing with  
2 the department.

3 (d) For the purpose of this section, the marijuana business categories that must be approved by a  
4 local jurisdiction under subsections (3) through (6) in a county in which the majority of voters voted against  
5 approval of Initiative Measure No. 190 in the November 3, 2020, general election before a business may  
6 operate are:

7 (i) cultivator;

8 (ii) manufacturer;

9 (iii) medical marijuana dispensary, except as provided in subsection (1)(b);

10 (iv) adult-use dispensary;

11 (v) combined-use marijuana licensee;

12 (vi) testing laboratory; and

13 (vii) marijuana transporter facility.

14 (e) Marijuana businesses located in counties in which the majority of voters voted to approve  
15 Initiative Measure No. 190 in the November 3, 2020, general election are not subject to the local government  
16 approval process under subsections (3) through (6).

17 (2) (a) To protect the public health, safety, or welfare, a local government may by ordinance or  
18 otherwise regulate a marijuana business that operates within the local government's jurisdictional area. The  
19 regulations may include but are not limited to inspections of licensed premises, including but not limited to  
20 indoor cultivation facilities, dispensaries, manufacturing facilities, and testing laboratories in order to ensure  
21 compliance with any public health, safety, and welfare requirements established by the department or the local  
22 government.

23 (b) A former medical marijuana licensee that does not apply for licensure as an adult-use  
24 dispensary is exempt from complying with any local governmental regulations that are adopted under this  
25 subsection after July 1, 2021, until its first license renewal date occurring after January 1, 2022, or the  
26 expiration of any grace period granted by the locality, whichever is later.

27 (3) An election regarding whether to approve any or all of the marijuana business categories listed  
28 in subsection (1)(d) to be located within a local jurisdiction may be requested by filing a petition in accordance

1 with 7-5-131 through 7-5-135 and 7-5-137 by:

2 (a) the qualified electors of a county; or

3 (b) the qualified electors of a municipality with a population of more than 5,000 persons according  
4 to the most recent federal decennial census.

5 (4) (a) An election held pursuant to this section must be called, conducted, counted, and  
6 canvassed in accordance with Title 13, chapter 1, part 4.

7 (b) An election pursuant to this section may be held in conjunction with a regular election of the  
8 governing body, general election, or a regular local or special election.

9 (5) If the qualified electors of a county vote to approve a type of marijuana business to be located  
10 in the jurisdiction, the governing body shall enter the approval into the records of the local government and  
11 notify the department of the election results.

12 (6) (a) If an election is held pursuant to this section in a county that contains within its limits a  
13 municipality of more than 5,000 persons according to the most recent federal decennial census:

14 (i) it is not necessary for the registered qualified electors in the municipality to file a separate  
15 petition asking for a separate or different vote on the question of whether to prohibit a category of marijuana  
16 business from being located in the municipality; and

17 (ii) the county shall conduct the election in a manner that separates the votes in the municipality  
18 from those in the remaining parts of the county.

19 (b) If a majority of the qualified electors in the county, including the qualified electors in the  
20 municipality, vote to approve a category of marijuana business to be located in the county, the county may  
21 allow that category of marijuana business to operate in the county.

22 (c) (i) If a majority of the qualified electors in the municipality vote to approve a category of  
23 marijuana business to be located in the municipality, the municipality may allow that type of marijuana business  
24 to operate in the municipality.

25 (ii) If a majority of the qualified electors in the municipality vote to prohibit a category of marijuana  
26 business from being located in the municipality, the municipality may not allow that type of marijuana business  
27 to operate in the municipality.

28 (d) Nothing contained in this subsection (6) prevents any municipality with a population of more

1 than 5,000 persons according to the most recent federal decennial census from having a separate election  
2 under the terms of this section.

3 (7) (a) A ~~county or municipality~~ with a population of more than 5,000 persons according to the most  
4 recent federal decennial census or a county that has voted to approve a category of marijuana business to be  
5 located in the jurisdiction or a county in which the majority of voters voted to approve Initiative Measure No. 190  
6 in the November 3, 2020, general election may vote to prohibit the previously approved or allowed operations  
7 within the jurisdiction.

8 (b) A vote overturning the approval of a category of marijuana business or prohibiting the  
9 previously permitted operation of marijuana businesses is effective on the 90th day after the local election is  
10 held.

11 (8) A local government may not prohibit the transportation of marijuana within or through its  
12 jurisdiction on public roads by any person licensed to do so by the department or as otherwise allowed by this  
13 chapter."  
14

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

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17 NEW SECTION. Section 3. Applicability. [This act] applies retroactively, within the meaning of 1-2-  
18 109, to elections held on or after [the effective date of this act].

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