

HOUSE BILL NO. 304

INTRODUCED BY J. HINKLE, S. KERNS, J. SCHILLINGER, T. RUNNING WOLF, C. KNUDSEN, S. GIST, B. MITCHELL, P. FIELDER, S. VINTON, M. BERTOGLIO, L. BREWSTER, J. DOOLING, M. BINKLEY, B. LER, A. REGIER, S. GALLOWAY, L. JONES, D. LOGE, B. KEENAN, C. HINKLE, J. READ, J. GILLETTE, G. OBLANDER, G. PARRY, T. MANZELLA, S. HINEBAUCH, T. MCGILLVRAY, B. GILLESPIE, P. GREEN, G. KMETZ, J. FITZPATRICK, D. ZOLNIKOV, R. MINER, B. PHALEN, J. KARLEN, B. CARTER, L. DEMING, T. SMITH, Z. WIRTH, E. BUTCHER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO MARIJUANA CULTIVATORS AND MARIJUANA MANUFACTURERS; REQUIRING A MARIJUANA CULTIVATOR AND A MARIJUANA MANUFACTURER TO INSTALL AN AIR FILTRATION SYSTEM; PROVIDING FOR INSPECTION REQUIREMENTS AND REMEDIES; AMENDING SECTIONS 16-12-210, 16-12-221, AND 16-12-223, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

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

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

The department shall conduct unannounced inspections of licensed premises.

(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.

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

(b) Each testing laboratory shall keep:

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

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

1 products.

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

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

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

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

11 (5) (a) On inspection and notice by the department, a licensee in violation of 16-12-221(3) or 16-
12 12-223(1)(d) shall:

13 (i) provide a written plan of correction within 10 days to the department; and

14 (ii) comply with the written plan of correction within 3 months.

15 (b) The department may grant an extension of 3 months for the purposes of installation hardships
16 of an air filtration system or other odor neutralization system that meets the requirements of 16-12-221(3).

17 (c) Pursuant to 16-12-109, the department may revoke, suspend, or refuse to renew a licensee's
18 license or issue a penalty to a licensee for noncompliance with the provisions of subsection (5)(a).

19 ~~(5)(6)~~ 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)(7)~~ 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

(c) noncompliance with any provision of this chapter.

~~(7)(8)~~ The department may suspend or modify a license or endorsement without advance notice upon a finding that presents an immediate threat to the health, safety, or welfare of consumers, employees of the licensee, or members of the public. The department may establish by rule the applicable procedures for securing or disposing of the inventory in such circumstances.

~~(8)(9)~~ (a) Review of a department action imposing a suspension, revocation, or other modification under this chapter must be conducted as a contested case hearing before the department's office of dispute resolution under the provisions of the Montana Administrative Procedure Act.

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

(c) An appeal pursuant to subsection ~~(8)(b)~~ (9)(b) must be made by filing a complaint setting forth the grounds for relief and the nature of relief demanded with the district court within 30 days following receipt of notice of the department's final decision.

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

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

Section 2. Section 16-12-221, MCA, is amended to read:

"16-12-221. Manufacturer -- requirements -- limitations -- fees. (1) A person licensed as a manufacturer shall:

(a) prepare marijuana products at a licensed premises exclusively; and

(b) use equipment that is used exclusively for the manufacture and preparation of marijuana products.

(2) All licensed premises on which marijuana products are manufactured must meet any applicable standards set by a local board of health for a retail food establishment as defined in 50-50-102.

(3) (a) All indoor licensed premises on which marijuana products are manufactured must have a properly operating air filtration system or other odor neutralization system for the reduction of marijuana odor at the exterior of the building.

(b) For purposes of this subsection (3), the department may adopt rules relating to the objective measurement of odors at the boundary of the licensee's property, including using a standard of 1 volume of odorous air to be diluted with 7 volumes of odor-free air to constitute a violation of this subsection (3).

(c) This subsection (3) does not apply to any licensed facility that is greater than 1 mile from any other business or residence.

~~(3)(4)~~ An applicant for a manufacturer license shall demonstrate that the local government approval provisions contained in 16-12-301 have been satisfied in the jurisdiction where each proposed manufacturing facility is 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.

~~(4)(5)~~ When evaluating an initial or renewal application, the department shall evaluate each proposed manufacturing facility for compliance with the provisions of 16-12-207 and 16-12-210.

~~(5)(6)~~ Marijuana products may not be considered a food or drug for the purposes of Title 50, chapter 31.

~~(6)(7)~~ (a) The department shall charge a manufacturer license fee for an initial application and at each renewal. The license fee is based on the amount of concentrate produced at a manufacturing facility on a monthly basis. The annual fees for licensees are:

(i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than 1 pound of concentrate and up to 10 pounds of concentrate;

(ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between 10 pounds of concentrate and 15 pounds of concentrate; and

(iii) \$20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds or more of concentrate.

(b) The department may create additional fee levels as necessary.

(c) A manufacturer may apply to advance to the next licensing level in conjunction with a regular renewal application by demonstrating that its proposed additional or expanded manufacturing facility or facilities are located in a jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied or that they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

~~(7)~~(8) The department may adopt rules:

- (a) for the inspection of proposed manufacturing facilities;
- (b) for investigating the amount of concentrate produced at a manufacturing facility; and
- (c) for investigating owners or applicants for a determination of beneficial ownership or financial interest."

Section 3. 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 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.

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

1 cultivation facilities.

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

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

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

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

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

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

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

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

20 (d) (a) All licensed premises on which marijuana products are cultivated indoors must have a
21 properly operating air filtration system that meets the requirements of 16-12-221(3).

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

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

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

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

the square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can otherwise demonstrate to the department that there is a market for the marijuana it seeks to produce; and

(C) its proposed additional or expanded indoor cultivation facility or facilities are located in a jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied or that they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election.

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

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

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

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

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

(3) The department may adopt rules:

- (a) for inspection of proposed indoor cultivation facilities under subsection (1);
- (b) for investigating owners or applicants for a determination of financial interest; and
- (c) in consultation with the department of agriculture and based on well-supported science, to require licensees to adopt practices consistent with the prevention, introduction, and spread of insects, diseases, and other plant pests into Montana.

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

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

Amendment - 1st Reading-white - Requested by: Edward Buttrey - (H) Business and Labor

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Drafter: Jameson Walker, 406-444-3722

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1 (f) \$13,000 for a cultivator with a tier 5 canopy license;

2 (g) \$15,000 for a cultivator with a tier 6 canopy license;

3 (h) \$17,500 for a cultivator with a tier 7 canopy license;

4 (i) \$20,000 for a cultivator with a tier 8 canopy license;

5 (j) \$23,000 for a cultivator with a tier 9 canopy license;

6 (k) \$27,000 for a cultivator with a tier 10 canopy license;

7 (l) \$32,000 for a cultivator with a tier 11 canopy license; and

8 (m) \$37,000 for a cultivator with a tier 12 canopy license.

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

11 (6) A former medical marijuana licensee who engaged in outdoor cultivation before November 3,
12 2020, may continue to engage in outdoor cultivation."

13

14 NEW SECTION. **Section 4. Effective date.** [This act] is effective January 1, 2024.

15 - END -